



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1598/1

JK:kjf/6

1/18 or 1/19

RMR

DOA:.....Koskinen, BB0401 - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

in 1-18-05

B-N

Do Not Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from DOR. Also, a person may not sell tobacco products in this state as a distributor or subjobber without having a permit from DOR. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale. A "subjobber" is any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and who sells such products to any person other than the ultimate consumer.

This bill prohibits a direct marketer from selling cigarettes or tobacco products to consumers in this state without having the appropriate permit from DOR. Under the bill, "direct marketer" is defined as any person who solicits or sells cigarettes or tobacco products to consumers in this state by direct marketing. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes or tobacco products to consumers in this state, or selling cigarettes or tobacco products to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes or

tobacco products, including using newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the Internet.

A direct marketer who sells cigarettes to consumers in this state must apply to DOR for a permit and submit a fee with the permit application based on the number of cigarettes that the direct marketer sells annually to consumers in this state. If the direct marketer sells no more than 30,000 cigarettes annually to consumers in this state, the fee is \$500. If the direct marketer sells more than 30,000 cigarettes annually to consumers in this state, the fee is \$1,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

Under the bill, DOR will not issue a permit to a direct marketer unless the direct marketer certifies to DOR that all sales of cigarettes or tobacco products to consumers in this state will be ^{check or} credit card transactions; that the invoices for all shipments of cigarettes or tobacco products will bear the direct marketer's name, address, and permit number; and that the direct marketer will provide DOR any information that DOR considers necessary for cigarette and tobacco products tax and permit purposes. The direct marketer may not sell any cigarettes or tobacco products unless the sales tax, use tax, cigarette tax, or tobacco products tax, as appropriate, has been paid on the sale of the cigarettes or tobacco products. In addition, a direct marketer may not sell cigarettes or tobacco products in this state unless the direct marketer has a mechanism, approved by DOR, for verifying the age of the purchaser, and the direct marketer receives from the purchaser, at the time of purchase, a copy or facsimile of a government issued identification and the name specified on the identification matches the name of the purchaser.

Under the bill, cigarettes and tobacco products may not be shipped to a person who is under 18 years of age and may not be shipped to a post-office box.

Under current law, a person may not sell cigarettes or tobacco products to consumers in this state unless the person obtains a license from each city, village, or town in which the person intends to sell cigarettes or tobacco products. The city, village, or town may charge not less than \$5 annually nor more than \$100 annually for such a license. Under the bill, no city, village, or town may issue such a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products or who has not submitted proof to the city, village, or town that he or she holds a valid retailer's permit issued by DOR.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 20.566 (1) (gc) *Administration of cigarette and tobacco product direct*
2 *marketing permits.* From the moneys received from permits issued and penalties
3 assessed under ss. 139.345, 139.40 (2), and 139.795, the amounts in the schedule for
4 enforcing and administering cigarette and tobacco product direct marketing permits
5 and penalties under ss. 139.345, 139.40 (2), and 139.795.

 ***NOTE: This SECTION involves a change in an appropriation that must be
reflected in the revised schedule in s. 20.005, stats.

6 **SECTION 2.** 134.65 (1) of the statutes is amended to read:

7 134.65 (1) No person, except a person who holds a valid permit under s. 139.345
8 or 139.795 and whose business premises is not physically located in this state, shall
9 in any manner, or upon any pretense, or by any device, directly or indirectly sell,
10 expose for sale, possess with intent to sell, exchange, barter, dispose of or give away
11 any cigarettes or tobacco products to any person not holding a license as herein
12 provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a
13 license from the clerk of the city, village or town wherein such privilege is sought to
14 be exercised.

15 **SECTION 3.** 134.65 (1r) of the statutes is created to read:

16 134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom
17 any of the following applies:

18 1. Subject to ss. 111.321, 111.322, and 111.335, the person has an arrest record
19 or a conviction record.

20 2. Subject to ss. 111.321, 111.322, and 111.335, the person has been convicted
21 of a felony, or as a repeat or habitual offender, unless pardoned.

22 3. The person has not submitted proof as provided under s. 77.61 (11).

(b) The requirements under par. (a) apply to all partners of a partnership, all members of limited liability company, all agents of a limited liability company or corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and 111.335, if a business entity has been convicted of a crime, the entity may not be issued a license under sub. (1) unless the entity has terminated its relationship with the individuals whose actions directly contributed to the conviction.

SECTION 4. 134.65 (2) (a) of the statutes is amended to read:

134.65 (2) (a) ~~Except~~ Subject to sub. (1r), and except as provided in par. (b), upon filing of a proper written application a license shall be issued on July 1 of each year or when applied for and continue in force until the following June 30 unless sooner revoked. The city, village or town may charge a fee for the license of not less than \$5 nor more than \$100 per year which shall be paid to the city, village or town treasurer before the license is issued.

SECTION 5. 134.66 (1) (am) of the statutes is created to read:

134.66 (1) (am) “Direct marketer” has the meaning given in s. 139.30 (2n).

SECTION 6. 134.66 (2) (a) of the statutes is amended to read:

134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration cigarettes or tobacco products to any person under the age of 18, except as provided in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph for the purchase of cigarettes or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.

1 **SECTION 7.** 134.66 (2) (am) of the statutes is amended to read:

2 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
3 subjobber, no agent, employee or independent contractor of a retailer, direct
4 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
5 of an independent contractor may provide for nominal or no consideration cigarettes
6 or tobacco products to any person except in a place where no person younger than 18
7 years of age is present or permitted to enter unless the person who is younger than
8 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
9 who has attained the age of 18 years.

10 **SECTION 8.** 134.66 (2) (d) of the statutes is amended to read:

11 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
12 or retailer, or their employees or agents, may provide cigarettes or tobacco products
13 for nominal or no consideration to any person under the age of 18.

14 **SECTION 9.** 134.66 (2) (e) of the statutes is amended to read:

15 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
16 than as a package or container on which a stamp is affixed under s. 139.32 (1).

17 **SECTION 10.** 134.66 (3m) of the statutes is created to read:

18 134.66 (3m) **DEFENSE OF DIRECT MARKETER.** Proof of any of the following facts
19 by a direct marketer who sells cigarettes or tobacco products to a person under the
20 age of 18 is a defense to any prosecution for a violation under sub. (2) (a):

21 (a) That the direct marketer used a mechanism, approved by the department
22 of revenue, for verifying the age of the purchaser.

23 (b) That the purchaser falsely represented that he or she had attained the age
24 of 18 and presented a copy or facsimile of a government issued identification.

1 (c) That the name and birthdate of the purchaser, as indicated by the purchaser,
2 matched the name and birthdate on the identification presented under par. (b).

3 (d) That the sale was made in good faith, in reasonable reliance on the
4 mechanism described in par. (a) and the representation and identification under
5 pars. (b) and (c), and in the belief that the purchaser had attained the age of 18.

6 **SECTION 11.** 139.30 (1m) of the statutes is created to read:

7 139.30 (1m) "Consumer" means any individual who receives cigarettes for his
8 or her personal use or consumption or any individual who has title to or possession
9 of cigarettes for any purpose other than for sale or resale.

10 **SECTION 12.** 139.30 (2n) of the statutes is created to read:

11 139.30 (2n) "Direct marketer" means any person who solicits or sells cigarettes
12 to consumers in this state by direct marketing.

13 **SECTION 13.** 139.30 (2p) of the statutes is created to read:

14 139.30 (2p) "Direct marketing" means publishing or making accessible an offer
15 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers
16 in this state, using any means by which the consumer is not physically present at the
17 time of sale on a premise that sells cigarettes.

18 **SECTION 14.** 139.30 (3) of the statutes is amended to read:

19 139.30 (3) "Distributor" means any person who acquires unstamped cigarettes
20 from the manufacturer thereof or from the first importer of record thereof, affixes
21 stamps to the packages or other containers, stores them and sells them to other
22 permittees or to retailers for resale ~~or~~ and who acquires may acquire stamped
23 cigarettes from another permittee distributor for such sales.

24 **SECTION 15.** 139.30 (4n) of the statutes is created to read:

1 139.30 (4n) “Government issued identification” includes a valid driver’s
2 license, state identification card, passport, or military identification.

3 **SECTION 16.** 139.30 (8s) of the statutes is created to read:

4 139.30 (8s) “Person” means any individual, sole proprietorship, partnership,
5 limited liability company, corporation, or association, or any owner of a single-owner
6 entity that is disregarded as a separate entity under ch. 71.

7 **SECTION 17.** 139.30 (10) of the statutes is amended to read:

8 139.30 (10) “Retailer” means any person who sells, exposes for sale or possesses
9 with intent to sell to consumers any cigarettes by any means in which the consumer
10 is physically present at the time of sale on a premises that sells cigarettes.

11 **SECTION 18.** 139.32 (1) of the statutes is amended to read:

12 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the
13 payment, the department shall provide stamps. A person who has paid the tax shall
14 affix stamps of the proper denomination to each package in which cigarettes are
15 packed, prior to the first sale within this state. First sale does not include a sale by
16 a manufacturer to a distributor or to a direct marketer or by a distributor to a
17 permittee who has obtained department approval as provided for in s. 139.321 (1) (a)
18 2. The tax shall be paid only once on each package or container.

19 **SECTION 19.** 139.32 (4) of the statutes is repealed.

20 **SECTION 20.** 139.32 (5) of the statutes is amended to read:

21 139.32 (5) Manufacturers, direct marketers, and distributors having a permit
22 from the secretary shall receive a discount of ~~1.6%~~ 1.6 percent of the tax paid on
23 stamp purchases.

24 **SECTION 21.** 139.32 (5m) of the statutes is amended to read:

1 139.32 (5m) Distributors, direct marketers, and manufacturers shall pay to
2 the department the cost of printing and shipping those stamps.

3 **SECTION 22.** 139.32 (6) of the statutes is amended to read:

4 139.32 (6) Manufacturers, direct marketers, and distributors having a permit
5 from the secretary may purchase stamps on credit. The secretary may require
6 manufacturers, direct marketers, and distributors who purchase stamps on credit
7 to file under the conditions prescribed by the secretary by rule.

8 **SECTION 23.** 139.321 (1) (intro.) of the statutes is amended to read:

9 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~
10 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
11 (1) and 139.33 (4).

12 **SECTION 24.** 139.321 (1) (a) 1. of the statutes is amended to read:

13 139.321 (1) (a) 1. Manufacturers, direct marketers, distributors or warehouse
14 operators possessing valid permits issued by the secretary.

15 **SECTION 25.** 139.33 (3) of the statutes is amended to read:

16 139.33 (3) No person other than a member of the armed forces, as specified in
17 this subsection, a licensed distributor, or a licensed direct marketer may import into
18 this state ~~more than 400~~ cigarettes on which the excise tax imposed by s. 139.31 has
19 not been paid and the container of which does not bear proper stamps. Within 15
20 days, any such person importing cigarettes shall file a declaration of such cigarettes
21 imported and shall remit therewith the tax on such cigarettes imposed by this
22 section. Members of the armed forces shall not be required to report or pay the tax
23 on cigarettes in their possession if such cigarettes are issued to them by the U.S.
24 government or any of its subdivisions or were purchased in any armed forces post
25 exchange or service store. If the use tax imposed by this section is not paid when due,

1 it shall become delinquent and the person liable for it shall pay, in addition, a penalty
2 of \$25 for each 200 cigarettes. Interest on the delinquent tax and penalty shall accrue
3 at the rate of ~~1.5%~~ 1.5 percent per month or each fraction of a month from the date
4 the tax became due until paid.

5 **SECTION 26.** 139.34 (1) (a) of the statutes is amended to read:

6 139.34 (1) (a) No person may manufacture cigarettes in this state or sell
7 cigarettes in this state as a distributor, jobber, vending machine operator, direct
8 marketer, or multiple retailer and no person may operate a warehouse in this state
9 for the storage of cigarettes for another person without first filing an application for
10 and obtaining the proper permit to perform such operations from the department.

11 **SECTION 27.** 139.34 (1) (b) of the statutes is repealed.

12 **SECTION 28.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

13 139.34 (1) (c) (intro.) ~~Subject to ss. 111.321, 111.322 and 111.335, no~~ No permit
14 under this section may be granted to any person to whom any of the following applies:

15 **SECTION 29.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

16 **SECTION 30.** 139.34 (1) (c) 1m. of the statutes is created to read:

17 139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has
18 an arrest record or a conviction record.

19 **SECTION 31.** 139.34 (1) (c) 2m. of the statutes is created to read:

20 139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has
21 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

22 **SECTION 32.** 139.34 (1) (c) 3m. of the statutes is created to read:

23 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.
24 77.61 (11).

25 **SECTION 33.** 139.34 (1) (cm) of the statutes is created to read:

1 139.34 (1) (cm) The requirements under par. (c) apply to all partners of a
2 partnership, all members of limited liability company, all agents of a limited liability
3 company or corporation, and all officers of a corporation. Subject to ss. 111.321,
4 111.322, and 111.335, if a business entity has been convicted of a crime, the entity
5 may not be issued a permit under this subsection unless the entity has terminated
6 its relationship with the individuals whose actions directly contributed to the
7 conviction.

8 **SECTION 34.** 139.34 (4) of the statutes is amended to read:

9 139.34 (4) A separate permit shall be required of and issued to each class of
10 permittee and the holder of any permit shall perform only the operations thereby
11 authorized. Such permit shall not be transferable from one person to another or from
12 one premises to another. A separate permit shall be required for each place where
13 cigarettes are stamped or where cigarettes are stored for sale at wholesale ~~or~~,
14 through vending machines or multiple retail outlets, or by direct marketing.

15 **SECTION 35.** 139.34 (6) of the statutes is amended to read:

16 139.34 (6) A vending machine operator or a multiple retailer may acquire
17 unstamped cigarettes ~~from the manufacturers thereof~~ and affix the stamps to
18 packages or other containers only if the vending machine operator or multiple
19 retailer also holds a permit as a distributor or direct marketer.

20 **SECTION 36.** 139.34 (8) of the statutes is amended to read:

21 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on
22 the premises described in the permit. The warehouse permit shall not authorize the
23 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a
24 manufacturer, direct marketer, or distributor may be delivered only to a person
25 holding a permit as a manufacturer, direct marketer, or distributor.

1 **SECTION 37.** 139.345 of the statutes is created to read:

2 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to
3 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers
4 in this state by direct marketing unless the person has obtained a permit from the
5 department to make such sales or solicitations. The person shall file an application
6 for a permit under this subsection with the department, in the manner prescribed
7 by the department, and shall submit the following fee with the application:

8 1. If the person sells no more than 30,000 cigarettes annually to consumers in
9 this state by direct marketing, \$500.

10 2. If the person sells more than 30,000 cigarettes annually to consumers in this
11 state by direct marketing, \$1,000.

12 (b) A permit issued under par. (a) expires on December 31 of each year.

13 (c) The department may not issue a permit to a person under par. (a) unless the
14 person certifies to the department that the person shall acquire stamped cigarettes
15 from a licensed wholesaler or distributor or unstamped cigarettes from the first
16 importer of record thereof, pay the tax imposed under this subchapter on all
17 unstamped cigarettes and affix stamps to the cigarette packages or containers as
18 provided under s. 139.32 (1), store such packages or containers, and sell only such
19 packages or containers to consumers in this state by direct marketing; or purchase
20 cigarettes from a distributor, to the packages or containers of which stamps have
21 been affixed as provided under s. 139.32 (1), and sell only such packages or
22 containers to consumers in this state by direct marketing.

23 (d) No person may be issued a permit under this subsection unless the person
24 certifies to the department, in the manner prescribed by the department, that all
25 cigarette sales to consumers in this state shall be credit card or personal check

1 transactions; that the invoices for all shipments of cigarette sales from the person
2 shall bear the person's name and address and permit ultimately issued under this
3 subsection; and that the person shall provide the department any information the
4 department considers necessary to administer this section.

5 (2) (a) No person may purchase tax stamps in excess of the number of cigarette
6 sales specified in his or her permit under sub. (1) (a) unless the person pays the
7 permit fee under sub. (1) (a) that is applicable to the excess amount.

8 (b) No person may sell cigarettes in excess of the number of cigarette sales
9 specified in his or her permit under sub. (1) (a) unless the person pays the permit fee
10 under sub. (1) (a) that is applicable to the excess sales. Any person who sells
11 cigarettes in excess of the number of cigarette sales specified in his or her permit
12 shall pay a penalty to the department of \$5,000 or an amount that is equal to \$50 for
13 every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

14 (3) (a) No person may sell cigarettes to consumers in this state by direct
15 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and
16 stamps are affixed to the cigarette packages or containers as provided under s.
17 139.32.

18 (b) No person may sell cigarettes to consumers in this state by direct marketing
19 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

20 (c) No person may sell ~~cigarettes~~^{cigarettes} to consumers in this state by direct marketing
21 unless the cigarette brands are approved by the department and listed in the
22 directory of certified tobacco product manufacturers and brands as provided under
23 s. 895.12 (2) (b).

1 (4) No person may sell cigarettes to a consumer in this state by direct
2 marketing unless the person verifies the consumer's identity and that the consumer
3 is at least 18 years of age by any of the following methods:

4 (a) The person uses a database, approved by the department, that includes
5 information based on public records to verify the consumer's age and identity.

6 (b) The person receives from the consumer, at the time of purchase, a notarized
7 copy of a government issued identification, the name specified on the identification
8 matches the name of the consumer, and the birth date on the identification verifies
9 that the purchaser is at least 18 years of age.

10 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),
11 for verifying the age and identity of a consumer that is approved by the department.

12 (5) Any person who, without having a valid permit under sub. (1), sells or
13 solicits sales of cigarettes to consumers in this state by direct marketing shall pay
14 a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200
15 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct
16 marketing, whichever is greater.

17 (6) (a) No sale of cigarettes to a consumer in this state by direct marketing may
18 exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser
19 or address.

20 (b) Any person who sells cigarettes that exceed the maximum amounts under
21 par. (a) shall pay a penalty to the department of \$5,000 or an amount that is equal
22 to \$50 for every 200 cigarettes, or major fraction of 200 cigarettes, sold above the
23 maximum amounts, whichever is greater.

24 (c) Any person who purchases cigarettes that exceed the maximum amounts
25 under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the

1 department of \$25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased
2 above the maximum amounts.

3 (7) No cigarettes may be shipped to a person who is under 18 years of age and
4 no cigarettes may be shipped to a post-office box.

5 (8) All revenue collected from permits and penalties under this section shall
6 be credited to the appropriation account under s. 20.566 (1) (gc) to enforce and
7 administer this section.

8 **SECTION 38.** 139.35 (1) of the statutes is amended to read:

9 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another
10 and no person may accept, purchase or borrow any stamps from another. All sales
11 and transfers of stamps may be made only by the secretary to permit holding
12 manufacturers, direct marketers, and distributors.

13 **SECTION 39.** 139.37 (1) (a) of the statutes is amended to read:

14 139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~
15 ~~resale~~ solicit cigarette sales in this state ~~for any manufacturer or permittee without~~
16 ~~first obtaining a~~ unless the person has filed an application for and obtained a valid
17 certificate under s. 73.03 (50) and a salesperson's permit from the department of
18 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes
19 ~~or take orders for cigarettes~~ solicit cigarette sales in this state ~~without first having~~
20 ~~such person secure~~ unless the person has filed an application for and obtained a valid
21 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize
22 another person to sell cigarettes or solicit cigarette sales in this state unless the
23 person has filed an application for and obtained a valid certificate under s. 73.03 (50)
24 and a valid permit under s. 139.34. The department shall issue the required number
25 of permits to ~~manufacturers and permittees~~ who hold a valid certificate issued under

1 s. 73.03 (50). Each application for a permit shall disclose the name and address of
2 the employer and such permit shall remain effective only while the salesperson
3 represents such named employer. If such salesperson is thereafter employed by
4 another ~~manufacturer or permittee person~~, the salesperson shall obtain a new
5 salesperson's permit. Each ~~manufacturer and~~ permittee shall notify the department
6 within 10 days after the resignation or dismissal of any such salesperson holding a
7 permit.

8 **SECTION 40.** 139.38 (1) of the statutes is amended to read:

9 139.38 (1) Every manufacturer located out of the state shall keep records of all
10 sales of cigarettes shipped into this state. Every manufacturer located in the state
11 shall keep records of production, sales and withdrawals of cigarettes. Every
12 distributor and direct marketer shall keep records of purchases and sales of
13 cigarettes. Every manufacturer, direct marketer, and distributor holding a permit
14 from the secretary with the right to purchase and apply stamps shall also keep
15 records of purchases and disposition of stamps. Every jobber, multiple retailer, and
16 vending machine operator shall keep records of all purchases and disposition of
17 cigarettes. Every warehouse operator shall keep records of receipts and withdrawals
18 of cigarettes. All such records shall be accurate and complete and be kept in a
19 manner prescribed by the secretary. These records shall be preserved on the
20 premises described in the permit or license in such a manner as to ensure
21 permanency and accessibility for inspection at reasonable hours by authorized
22 personnel of the department.

23 **SECTION 41.** 139.38 (1m) of the statutes is created to read:

24 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
25 are kept by direct marketers shall indicate, for each shipment of cigarettes into this

1 state in the month preceding the report under sub. (2), the invoice date and number;
2 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
3 manufacturer of the cigarettes shipped and the manufacturer's origin; the
4 purchaser's name, address, and birth date; the name of the person to whom the
5 cigarettes were shipped; the address to which the cigarettes were shipped; and any
6 other information the department requires.

7 **SECTION 42.** 139.38 (2) of the statutes is amended to read:

8 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
9 distributor, jobber, and direct marketer shall render a true and correct invoice of
10 every sale of cigarettes at wholesale and every permittee shall on or before the 15th
11 day of each calendar month file a verified report of all cigarettes purchased, sold,
12 received, warehoused or withdrawn during the preceding calendar month.

13 (b) The department may allow any jobber, multiple retailer, direct marketer,
14 or vending machine operator permittee who does not sell cigarettes, except for those
15 on which the tax under this chapter is paid, to file a quarterly report. The quarterly
16 report shall be filed on or before the 15th day of the next month following the close
17 of each calendar quarter. The report shall specify the number of cigarettes purchased
18 and sold during the preceding calendar quarter.

19 **SECTION 43.** 139.395 of the statutes is amended to read:

20 **139.395 Theft of tax moneys.** All cigarette tax moneys received by a
21 distributor, direct marketer, or manufacturer for the sale of cigarettes on which the
22 tax under this subchapter has become due and has not been paid are trust funds in
23 the hands of the distributor, direct marketer, or manufacturer and are the property
24 of this state. Any distributor, direct marketer, or manufacturer who fraudulently
25 withholds, appropriates or otherwise uses cigarette tax moneys that are the property

1 of this state is guilty of theft under s. 943.20 (1), whether or not the distributor, direct
2 marketer, or manufacturer has or claims to have an interest in those moneys.

3 **SECTION 44.** 139.40 (2) of the statutes is amended to read:

4 139.40 (2) ~~If cigarettes which do not bear the proper tax stamps or on which~~
5 ~~the tax has not been paid~~ Cigarettes that are so seized ~~they~~ as provided under sub.
6 (1) may be given to law enforcement officers to use in criminal investigations or sold
7 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after
8 deducting the costs of the sale and ~~the keeping of~~ storing the property, the proceeds
9 of the sale shall be paid into the state treasury, except that proceeds from the sale
10 of cigarettes seized from a direct marketer and obtained through the administration
11 of this subsection shall be credited to the appropriation account under s. 20.566 (1)
12 (gc). If the secretary finds that such cigarettes may deteriorate or become unfit for
13 use in criminal investigations or for sale or that those uses would otherwise be
14 impractical, the secretary may order them destroyed or give them to a charitable or
15 penal institution for free distribution to patients or inmates.

16 **SECTION 45.** 139.45 of the statutes is amended to read:

17 **139.45 Prosecutions by attorney general.** Upon request by the secretary
18 of revenue, the attorney general may represent this state or assist a district attorney
19 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

20 **SECTION 46.** 139.75 (2) of the statutes is amended to read:

21 139.75 (2) "Consumer" means any individual who receives tobacco products for
22 his or her personal use or consumption or any person individual who has title to or
23 possession of tobacco products ~~in storage for use or other consumption in this state~~
24 any purpose other than for sale or resale.

25 **SECTION 47.** 139.75 (3g) of the statutes is created to read:

1 139.75 (3g) “Direct marketer” means any person who solicits or sells tobacco
2 products to consumers in this state by direct marketing.

3 **SECTION 48.** 139.75 (3r) of the statutes is created to read:

4 139.75 (3r) “Direct marketing” means publishing or making accessible an offer
5 for the sale of tobacco products to consumers in this state, or selling tobacco products
6 to consumers in this state, using any means by which the consumer is not physically
7 present at the time of sale on a premise that sells tobacco products.

8 **SECTION 49.** 139.75 (4) (a) of the statutes is amended to read:

9 139.75 (4) (a) Any person in this state engaged in the business of selling tobacco
10 products ~~in this state~~ who brings, or causes to be brought, into this state from outside
11 the state any tobacco products for sale;

12 **SECTION 50.** 139.75 (4) (c) of the statutes is amended to read:

13 139.75 (4) (c) Any person outside this state engaged in the business of selling
14 tobacco products ~~outside this state~~ who ships or transports tobacco products to
15 retailers in this state to be sold by those retailers.

16 **SECTION 51.** 139.75 (4) (cm) of the statutes is created to read:

17 139.75 (4) (cm) Any person outside this state engaged in the business of selling
18 tobacco products who ships or transports tobacco products to consumers in this state.

19 **SECTION 52.** 139.75 (4n) of the statutes is created to read:

20 139.75 (4n) “Government issued identification” includes a valid driver’s
21 license, state identification card, passport, or military identification.

22 **SECTION 53.** 139.75 (5s) of the statutes is created to read:

23 139.75 (5s) “Person” means any individual, sole proprietorship, partnership,
24 limited liability company, corporation, or association, or any owner of a single-owner
25 entity that is disregarded as a separate entity under ch. 71.

1 **SECTION 54.** 139.75 (7) of the statutes is amended to read:

2 139.75 (7) “Retail outlet” means each place of business from which tobacco
3 products are sold to consumers by a retailer.

4 **SECTION 55.** 139.75 (8) of the statutes is amended to read:

5 139.75 (8) “Retailer” means any person ~~engaged in the business of selling~~
6 ~~tobacco products~~ who sells, exposes for sale, or possesses with intent to sell, to
7 ~~ultimate~~ consumers any tobacco products by any means in which the consumer is
8 physically present at the time of sale on a premises that sells tobacco products.

9 **SECTION 56.** 139.76 (3) of the statutes is created to read:

10 139.76 (3) Except as provided in sub. (2), no person may possess tobacco
11 products in this state unless the tax imposed under sub. (1) is paid on such tobacco
12 products.

13 **SECTION 57.** 139.78 (1m) of the statutes is created to read:

14 139.78 (1m) Except as provided in s. 139.76 (2), no person other than a
15 distributor with a valid permit under s. 139.79 may import into this state tobacco
16 products for which the tax imposed under s. 139.76 (1) has not been paid.

17 **SECTION 58.** 139.79 (title) of the statutes is amended to read:

18 **139.79 (title) Permits; distributor; direct marketer; subjobber.**

19 **SECTION 59.** 139.79 (1) of the statutes is amended to read:

20 139.79 (1) No person may engage in the business of a distributor, direct
21 marketer, or subjobber of tobacco products at any place of business unless that
22 person has filed an application for and obtained a permit from the department to
23 engage in that business at such place.

24 **SECTION 60.** 139.79 (2) of the statutes is amended to read:

1 139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under
2 this section.

3 **SECTION 61.** 139.795 of the statutes is created to read:

4 **139.795 Direct marketing.** (1) (a) (intro.) No person may sell tobacco
5 products by direct marketing to consumers in this state as a direct marketer or solicit
6 sales of tobacco products to consumers in this state by direct marketing unless the
7 person has obtained a permit from the department to make such sales or
8 solicitations. The person shall file an application for a permit under this subsection
9 with the department, in the manner prescribed by the department, and shall submit
10 a \$500 fee with the application.

11 (b) No person may be issued a permit under this subsection unless the person
12 holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and
13 (9), as it applies to permits issued under s. 139.34, applies to permits issued under
14 this subsection.

15 (c) A permit issued under this subsection expires on December 31 of each year.

16 (d) No person may be issued a permit under this subsection unless the person
17 certifies to the department, in the manner prescribed by the department, that all
18 tobacco product sales to consumers in this state shall be credit card or personal check
19 transactions; that the invoice for all shipments of tobacco product sales from the
20 person shall bear the person's name and address and permit ultimately issued under
21 this subsection; and that the person shall provide the department any information
22 the department considers necessary to administer this section.

23 **(2)** No person may sell tobacco products to consumers in this state by direct
24 marketing unless the tax imposed under s. 139.76, and under s. 77.52 or 77.53, has
25 been paid with regard to such products.

(3) No person may sell tobacco products to a consumer in this state by direct marketing unless the person verifies the consumer's identity and that the consumer is at least 18 years of age by any of the following methods:

(a) The person uses a database, approved by the department, that includes information based on public records to verify the consumer's age and identity.

(b) The person receives from the consumer, at the time of purchase, a notarized copy of a government issued identification, the name specified on the identification matches the name of the consumer, and the birth date on the identification verifies that the purchaser is at least 18 years of age.

(c) The person uses a mechanism, other than a mechanism under par. (a) or (b), for verifying the age and identity of a consumer that is approved by the department.

(4) Any person who, without having a valid permit under sub. (1), sells or solicits sales of tobacco products to consumers in this state by direct marketing shall pay a penalty to the department of \$5,000 or an amount that is equal to 50 percent of the tax due on the tobacco products the person sold, without having a valid permit under sub. (1), to consumers in this state by direct marketing, whichever is greater.

(5) No tobacco products may be shipped or delivered to a person who is under 18 years of age and no tobacco products may be shipped to a post-office box.

(6) All revenue collected from permits and penalties under this section shall be credited to the appropriation account under s. 20.566 (1) (gc) ~~to enforce and administer this section.~~

SECTION 62. 139.81 (1) of the statutes is amended to read:

139.81 (1) No person may sell ~~or take orders for~~ tobacco products ~~for resale or solicit sales of tobacco products~~ in this state ~~for any manufacturer or permittee~~ unless the person has filed an application for and obtained a valid certificate under

1 s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~
2 permittee shall authorize any person to sell ~~or take orders for~~ tobacco products or
3 solicit sales of tobacco products in this state unless the person has filed an application
4 for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.

5 No person ~~shall~~ ^{may} authorize another person to sell tobacco products or solicit sales of
6 tobacco products in this state unless the person has filed an application for and
7 obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79.

8 Each application for a permit shall disclose the name and address of the employer
9 and shall remain effective only while the salesperson represents the named
10 employer. If the salesperson is thereafter employed by another ~~manufacturer or~~
11 permittee person the salesperson shall obtain a new salesperson's permit. Each
12 ~~manufacturer and~~ permittee shall notify the department within 10 days after the
13 resignation or dismissal of any salesperson holding a permit.

14 **SECTION 63.** 139.81 (2) of the statutes is amended to read:

15 139.81 (2) Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this
16 section.

17 **SECTION 9141. Nonstatutory provisions; revenue.**

18 (1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The authorized
19 FTE positions for the department of revenue are increased by 1.5 PR positions on
20 July 1, 2005, to be funded from the appropriation under section 20.566 (1) (gc) of the
21 statutes, as created by this act, for the purpose of enforcing and administering
22 cigarette and tobacco product direct marketing permits and penalties.

23 (END)

D-Note

Date

1598/2du
JK:16j

This drafts make technical changes to the
URB-1598/1.

VK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1598/2dn
JK:kjf:ch

January 18, 2005

This draft makes technical changes to LRB-1598/1.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us

PO Box 8933
Madison, WI 53708-8933
Phone: 608-266-6466
Fax: 608-266-5718

**State of Wisconsin
Department of
Revenue**

Fax

To: Joe Kraye From: Shemie Gates-Hendrix
Fax: 4-6948 Date: 1-20-05
Phone: _____ Pages: 31

☐ Per our Conversation ☐ FYI ☐ Per Your Request

•COMMENTS:

~~Joe~~ Jenny Kraws asked me to
send this directly to you.
Please call with questions
or talk to
Deb Klimke - Excise Tax Auditor
6-8970

Thanks
Shemie 7-1262

Roger Johnson 6-6757

1598

Kreye, Joseph

From: Kraus, Jennifer - DOA
Sent: Friday, January 21, 2005 1:53 PM
To: Kreye, Joseph
Cc: Gates-Hendrix, Sherrie; Lashore, Patricia M
Subject: FW: direct marketing of cigs -- LRB 1598/2

Follow Up Flag: Follow up
Flag Status: Flagged

Joseph - Please have this draft effective July 1, 2006. Thx - Jenny

-----Original Message-----

From: Gates-Hendrix, Sherrie
Sent: Friday, January 21, 2005 11:39 AM
To: Kraus, Jennifer - DOA
Subject: RE: direct marketing of cigs -- LRB 1598/2

The fiscal estimate on our write-up was for a whole fiscal year. The proposal was never finalized since Michael chose not to submit it.

-----Original Message-----

From: Kraus, Jennifer - DOA
Sent: Friday, January 21, 2005 11:32 AM
To: Gates-Hendrix, Sherrie
Subject: RE: direct marketing of cigs -- LRB 1598/2

What did the fiscal estimate assume?

-----Original Message-----

From: Gates-Hendrix, Sherrie
Sent: Friday, January 21, 2005 10:49 AM
To: Kraus, Jennifer - DOA
Cc: Kreye, Joseph
Subject: direct marketing of cigs -- LRB 1598/2

Jenny -- On the marked up draft I sent over yesterday (LRB 1598/2) I indicated on the last page of the draft that we would like to have a delayed effective date. Ideally it would be July 1, 2006 or about 9 months from the date of enactment. You might want to give some direction to Joe Kreye on this, though, as I'm not sure how a delayed effective date fits with your plans for this proposal.

Sherrie Gates-Hendrix
DOR Legislative Liaison
<http://www.dor.state.wi.us>
(☎) phone: (608) 267-1262
(☎) fax: (608) 266-5718

1598

Kreye, Joseph

From: Gates-Hendrix, Sherrie
Sent: Friday, January 21, 2005 10:49 AM
To: Kraus, Jennifer - DOA
Cc: Kreye, Joseph
Subject: direct marketing of cigs -- LRB 1598/2

Jenny -- On the marked up draft I sent over yesterday (LRB 1598/2) I indicated on the last page of the draft that we would like to have a delayed effective date. Ideally it would be July 1, 2006 or about 9 months from the date of enactment. You might want to give some direction to Joe Kreye on this, though, as I'm not sure how a delayed effective date fits with your plans for this proposal.

Sherrie Gates-Hendrix
DOR Legislative Liaison
<http://www.dor.state.wi.us>
(☎) phone: (608) 267-1262
(☎) fax: (608) 266-5718

Kreye, Joseph

From: Kraus, Jennifer - DOA
Sent: Thursday, January 20, 2005 3:35 PM
To: Kreye, Joseph
Cc: Lashore, Patricia M
Subject: FW: LRB Draft: 05-1598/2 Direct marketing of cigarettes and tobacco products

Follow Up Flag: Follow up
Flag Status: Flagged



05-1598/2



05-1598/2dn

Hi Joseph - In addition, to comments that DOR is going to be faxing you shortly (on this one and on streamlined sales tax), please eliminate the appropriation in this draft. The permitting revenue will be treated as GPR-Earned and DOR will have to use base resources to enforce.

Thanks much - Jennifer

-----Original Message-----

From: Nelson, Linda
Sent: Tuesday, January 18, 2005 12:49 PM
To: Kraus, Jennifer - DOA
Subject: FW: LRB Draft: 05-1598/2 Direct marketing of cigarettes and tobacco products

-----Original Message-----

From: Merry-Mason, Monica
Sent: Tuesday, January 18, 2005 12:47 PM
To: Linda Nelson (E-mail)
Subject: FW: LRB Draft: 05-1598/2 Direct marketing of cigarettes and tobacco products

> -----
> **From:** Haugen, Caroline[SMTP:CAROLINE.HAUGEN@LEGIS.STATE.WI.US]
> **Sent:** Tuesday, January 18, 2005 12:47:27 PM
> **To:** Koskinen, John
> **Cc:** Hanaman, Cathlene; Haugen, Caroline; Merry-Mason, Monica
> **Subject:** LRB Draft: 05-1598/2 Direct marketing of cigarettes and tobacco products
> Auto forwarded by a Rule
>

Following is the PDF version of draft 05-1598/2.

PO Box 8933
Madison, WI 53708-8933
Phone: 608-266-6466
Fax: 608-266-5718

**State of Wisconsin
Department of
Revenue**

Fax

To: Joe Kraye From: Sherrie Gates-Hendrix
Fax: 4-6948 Date: 1-20-05
Phone: _____ Pages: 31

☐ Per our Conversation

☐ FYI

☐ Per Your Request

•COMMENTS:

~~to~~ Jenny Kraws asked me to
send this directly to you.
Please call with questions
or talk to
Deb Klimke - Excise Tax Auditor
6-8970
Thanks
Sherrie 7-1262

PO Box 8933
Madison, WI 53708-8933
Phone: 608-266-6466
Fax: 608-266-5718

**State of Wisconsin
Department of
Revenue**

Fax

To: Joe Kraye From: Sherrie Gates-Hendrix
Fax: 4-6948 Date: 1-20-05
Phone: _____ Pages: 31

☐ Per our Conversation

☐ F Y I

☐ Per Your Request

•COMMENTS:

~~Joe~~ Jenny Kraws asked me to
send this directly to you.
Please call with questions
or talk to
Deb Klimke - Excise Tax Auditor
6-8970
Thanks
Sherrie 7-1262

Activity Report

Date/Time 01-20-2005
Local ID 1 608264698
Local ID 2

04:52:11 p.m.

Transmit Header Text
Local Name 1 REFERENCE BUREAU
Local Name 2

Completed Jobs : 51

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	350	608 262 7111	09:07:53 a.m. 01-05-2005	00:01:29	7/7	1	EC	HS	CP14400
002	351		09:10:04 a.m. 01-05-2005	00:00:17	1/1	N/A	--	RP	CP
003	352		09:10:06 a.m. 01-05-2005	00:00:46	2/2	N/A	--	RP	CP
004	353	16082515572	10:12:44 a.m. 01-06-2005	00:00:18	1/1	1	EC	HS	CP12000
005	354		10:13:31 a.m. 01-06-2005	00:00:15	1/1	N/A	--	RP	CP
006	355		10:26:32 a.m. 01-06-2005	00:01:20	7/7	1	EC	HR	CP24000
007	356	16082515572	10:48:51 a.m. 01-06-2005	00:00:16	2/2	1	EC	HR	CP24000
008	357		12:41:24 p.m. 01-06-2005	00:00:43	3/3	1	EC	HR	CP26400
009	358	16082229341	12:27:51 p.m. 01-07-2005	00:03:16	9/9	1	EC	HR	CP14400
010	359	608 264 4660	04:26:23 p.m. 01-07-2005	00:00:57	2/2	1	EC	HS	CP14400
011	360		04:27:57 p.m. 01-07-2005	00:00:16	1/1	N/A	--	RP	CP
012	361	608 271 4009	10:10:47 a.m. 01-10-2005	00:00:58	2/2	1	EC	HS	CP14400
013	362		10:12:14 a.m. 01-10-2005	00:00:15	1/1	N/A	--	RP	CP
014	363	914067527437	10:53:32 a.m. 01-10-2005	00:00:42	2/2	1	EC	HS	CP14400
015	364		10:54:55 a.m. 01-10-2005	00:00:15	1/1	N/A	--	RP	CP
016	365	FBMC 850 425-4608	11:23:45 a.m. 01-10-2005	00:01:25	3/3	1	EC	HS	CP14400
017	366		11:25:51 a.m. 01-10-2005	00:00:15	1/1	N/A	--	RP	CP
018	367		01:15:49 p.m. 01-10-2005	00:01:34	13/13	1	EC	HR	CP21600
019	368	61151	02:18:07 p.m. 01-10-2005	00:01:32	13/13	1	EC	HS	CP26400
020	369		02:20:12 p.m. 01-10-2005	00:00:15	1/1	N/A	--	RP	CP
021	370	16082515572	03:05:26 p.m. 01-10-2005	00:00:24	1/1	1	EC	HS	CP14400
022	371		03:06:19 p.m. 01-10-2005	00:00:15	1/1	N/A	--	RP	CP
023	372	6082670590	05:19:26 p.m. 01-10-2005	00:03:56	2/3	1	EC	HS	TU9600
024	373		05:23:44 p.m. 01-10-2005	00:00:14	1/1	N/A	--	RP	CP
025	374	6082670590	05:24:03 p.m. 01-10-2005	00:06:20	3/3	1	EC	HS	CP9600
026	376		05:31:20 p.m. 01-10-2005	00:00:14	1/1	N/A	--	RP	CP
027	375	208 383 1198	05:30:33 p.m. 01-10-2005	00:00:27	1/1	1	EC	HS	CP26400
028	377		05:37:36 p.m. 01-10-2005	00:00:15	1/1	N/A	--	RP	CP
029	378	406 862 2143	01:34:30 p.m. 01-11-2005	00:00:20	2/2	1	EC	HR	CP24000
030	379	86617610	09:01:25 a.m. 01-12-2005	00:00:44	2/2	1	EC	HS	CP26400
031	380		09:02:33 a.m. 01-12-2005	00:00:16	1/1	N/A	--	RP	CP
032	381	6082646914	11:19:19 a.m. 01-12-2005	00:01:41	4/4	1	EC	HR	CP28800
033	382	608 267 8715	09:56:30 a.m. 01-13-2005	00:00:18	1/1	1	EC	HS	CP28800
034	383		09:57:10 a.m. 01-13-2005	00:00:14	1/1	N/A	--	RP	CP
035	384	01-9703	02:38:43 a.m. 01-14-2005	00:00:52	1/1	1	G3	HR	CP9600
036	385	2626355530	01:15:51 p.m. 01-14-2005	00:00:45	4/4	1	EC	HR	CP24000
037	386	82712605	02:04:30 p.m. 01-14-2005	00:00:27	1/1	1	EC	HS	CP14400
038	387		02:05:32 p.m. 01-14-2005	00:00:15	1/1	N/A	--	RP	CP
039	388	FBMC 850 425-4608	04:10:51 p.m. 01-18-2005	00:03:06	7/7	1	EC	HS	CP14400
040	389		04:14:44 p.m. 01-18-2005	00:00:16	1/1	N/A	--	RP	CP
041	390	608 267 0372	04:49:56 p.m. 01-19-2005	00:00:35	4/4	1	EC	HR	CP28800
042	391	82872340	10:38:28 a.m. 01-20-2005	00:00:23	2/2	1	EC	HS	CP26400
043	392		10:39:22 a.m. 01-20-2005	00:00:14	1/1	N/A	--	RP	CP
044	393		11:25:42 a.m. 01-20-2005	00:00:51	2/2	1	EC	HR	CP14400
045	394		02:54:44 p.m. 01-20-2005	00:00:26	3/3	1	EC	HR	CP26400
046	395	13042330402	03:15:23 p.m. 01-20-2005	00:00:26	2/2	1	EC	HR	CP26400
047	396	FBMC 850 425-4608	04:32:17 p.m. 01-20-2005	00:01:02	2/2	1	EC	HS	CP14400
048	397		04:33:59 p.m. 01-20-2005	00:00:15	1/1	N/A	--	RP	CP
049	398	608 266 5718	04:38:18 p.m. 01-20-2005	00:00:25	0/0	1	EC	HR	CP14400
050	399		04:40:25 p.m. 01-20-2005	00:06:10	13/13	1	EC	HR	CP14400
051	400		04:47:27 p.m. 01-20-2005	00:04:21	10/10	1	EC	HR	CP14400

Activity Report

Date/Time	01-20-2005	04:52:39 p.m.	Transmit Header Text
Local ID 1	608264698		Local Name 1 REFERENCE BUREAU
Local ID 2			Local Name 2

Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	TU: Terminated by user
HR: Host receive	PR: Polled remote	CP: Completed	TS: Terminated by system
WS: Waiting send	MS: Mailbox save	FA: Fail	RP: Report
			G3: Group 3
			EC: Error Correct

2005 - 2006 LEGISLATURE

LRB-1598/2

JK:kjf:ch

DOA:.....Koskinen, BB0401 - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from DOR. Also, a person may not sell tobacco products in this state as a distributor or subjobber without having a permit from DOR. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale. A "subjobber" is any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and who sells such products to any person other than the ultimate consumer.

This bill prohibits a direct marketer from selling cigarettes or tobacco products to consumers in this state without having the appropriate permit from DOR. Under the bill, "direct marketer" is defined as any person who solicits or sells cigarettes or tobacco products to consumers in this state by direct marketing. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes or tobacco products to consumers in this state, or selling cigarettes or tobacco products to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes or

2005 - 2006 Legislature

- 2 -

LRB-1598/2
JK:kjf:ch

tobacco products, including using newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the Internet.

A direct marketer who sells cigarettes to consumers in this state must apply to DOR for a permit and submit a fee with the permit application based on the number of cigarettes that the direct marketer sells annually to consumers in this state. If the direct marketer sells no more than ^{600,000} 30,000 cigarettes annually to consumers in this state, the fee is \$500. If the direct marketer sells more than ^{600,000} 30,000 cigarettes annually to consumers in this state, the fee is \$1,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

Under the bill, DOR will not issue a permit to a direct marketer unless the direct marketer certifies to DOR that all sales of cigarettes or tobacco products to consumers in this state ^{meet the requirements for legal sale and} will be check or credit card transactions; that the invoices for all shipments of cigarettes or tobacco products will bear the direct marketer's name, address, and permit number; and that the direct marketer will provide DOR any information that DOR considers necessary for cigarette and tobacco products tax and permit purposes. The direct marketer may not sell any cigarettes or tobacco products unless the sales tax, use tax, cigarette tax, or tobacco products tax, as appropriate, has been paid on the sale of the cigarettes or tobacco products. In addition, a direct marketer may not sell cigarettes or tobacco products in this state unless the direct marketer has a mechanism, approved by DOR, for verifying the age of the purchaser, and the direct marketer receives from the purchaser, at the time of purchase, a copy or facsimile of a government issued identification and the name specified on the identification matches the name of the purchaser.

Under the bill, cigarettes and tobacco products may not be shipped to a person who is under 18 years of age and may not be shipped to a post-office box.

Under current law, a person may not sell cigarettes or tobacco products to consumers in this state unless the person obtains a license from each city, village, or town in which the person intends to sell cigarettes or tobacco products. The city, village, or town may charge not less than \$5 annually nor more than \$100 annually for such a license. Under the bill, no city, village, or town may issue such a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products or who has not submitted proof to the city, village, or town that he or she holds a valid retailer's permit issued by DOR.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1

SECTION 1. 20.566 (1) (gc) of the statutes is created to read:

meet the
requirements for
legal sale
and

2005 - 2006 Legislature

- 3 -

LRB-1598/2

JK:kjf:ch

SECTION 1

1 20.566 (1) (gc) *Administration of cigarette and tobacco product direct*
2 *marketing permits.* From the moneys received from permits issued and penalties
3 assessed under ss. 139.345, 139.40 (2), and 139.795, the amounts in the schedule for
4 enforcing and administering cigarette and tobacco product direct marketing permits
5 and penalties under ss. 139.345, 139.40 (2), and 139.795.

 ****NOTE: This SECTION involves a change in an appropriation that must be
 reflected in the revised schedule in s. 20.005, stats.

6 SECTION 2. 134.65 (1) of the statutes is amended to read:

OK 7 134.65 (1) No person, except a person who holds a valid permit under s. 139.345
8 or 139.795 and whose business premises is not physically located in this state, shall
9 in any manner, or upon any pretense, or by any device, directly or indirectly sell,
10 expose for sale, possess with intent to sell, exchange, barter, dispose of or give away
11 any cigarettes or tobacco products to any person not holding a license as herein
12 provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a
13 license from the clerk of the city, village or town wherein such privilege is sought to
14 be exercised.

15 SECTION 3. 134.65 (1r) of the statutes is created to read:

16 134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom
17 any of the following applies:

18 1. Subject to ss. 111.321, 111.322, and 111.335, the person has an arrest record
19 or a conviction record.

OK 20 2. Subject to ss. 111.321, 111.322, and 111.335, the person has been convicted
21 of a felony, or as a repeat or habitual offender, unless pardoned.

22 3. The person has not submitted proof as provided under s. 77.61 (11).

2005 - 2006 Legislature

- 4 -

LRB-1598/2

JK:kjf:ch

SECTION 3

ck 1 (b) The requirements under par. (a) apply to all partners of a partnership, all
2 members of limited liability company, all agents of a limited liability company or
3 corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and
4 111.335, if a business entity has been convicted of a crime, the entity may not be
5 issued a license under sub. (1) unless the entity has terminated its relationship with
6 the individuals whose actions directly contributed to the conviction.

7 SECTION 4. 134.65 (2) (a) of the statutes is amended to read:

8 134.65 (2) (a) ~~Except Subject to sub. (1r), and except~~ as provided in par. (b),
9 upon filing of a proper written application a license shall be issued on July 1 of each
10 year or when applied for and continue in force until the following June 30 unless
11 sooner revoked. The city, village or town may charge a fee for the license of not less
12 than \$5 nor more than \$100 per year which shall be paid to the city, village or town
13 treasurer before the license is issued.

14 *INSERTS → 134.65(3m) + 134.65(5) — see next page*

SECTION 5. 134.66 (1) (am) of the statutes is created to read:

15 134.66 (1) (am) "Direct marketer" has the meaning given in s. 139.30 (2n).

16 SECTION 6. 134.66 (2) (a) of the statutes is amended to read:

17 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
18 subjobber, no agent, employee or independent contractor of a retailer, direct
19 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
20 of an independent contractor may sell or provide for nominal or no consideration
21 cigarettes or tobacco products to any person under the age of 18, except as provided
22 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph
23 for the purchase of cigarettes or tobacco products from his or her vending machine
24 by a person under the age of 18 if the vending machine operator was unaware of the
25 purchase.

- 4a -

Insert [REDACTED] 134.65 (3m) of the statutes is created to read:

134.65 (3m) of the statutes is created to read: Applications for Licenses.

(a) Contents. The department shall prepare an application form for cigarette and tobacco products licenses issued under this section. Each form shall require all of the following information:

1. A history of the applicant relevant to the applicant's fitness to hold a license.
2. The kind of license for which the applicant is applying.
3. The premises where cigarettes and tobacco products will be sold or stored or both.
4. If the applicant is a corporation, the identity of the corporate officers and agent.
5. If the applicant is a limited liability company, the identity of the company members

or managers and agent.

6. The applicant's trade name, if any.
7. Any other information required by the department.

(b) Distribution. The department shall make one copy of each license application that it prepares available to each municipality.

(c) Application form use. An application form prepared by the department shall be used by each applicant for a license.

(d) Place of filing applications. Each application for license shall be sworn to by the applicant. The applicant shall file the application for a license with the municipal clerk of the intended place of sale.

(e) Time of filing and issuance. All applications for licenses to sell cigarettes and tobacco products shall be filed with the clerk of the municipality in which the premises are

located at least 15 days prior to the granting of the license.

(f) Subsequent changes. Within 10 days of any change in any fact set out in an application for license or permit to sell cigarette and tobacco products, the licensee or permittee shall file with the issuing authority a written description of the changed fact.

(g) Records.

1. Any person may inspect application for licenses to sell cigarette and tobacco products.

2. The clerk of the municipality shall retain all applications made to it for licenses to sell cigarette and tobacco products

3. The clerk of the municipality may destroy all applications more than 5 years old which have been retained under subd 2.

Insert ~~134.65~~ 134.65 (5) of the statutes is amended to read:

134.65 (5) Any person violating this section shall be fined not more than ~~\$100~~ \$1,000 nor less than ~~\$25~~ \$500 for the first offense and shall be fined not more than ~~\$200~~ \$5,000 nor less than ~~\$25~~ \$1,000 or imprisoned not exceeding 180 days or both for the 2nd or subsequent offense. ~~If upon such 2nd or subsequent violation, the person so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, the person shall be fined not more than \$300 nor less than \$25 or imprisoned not exceeding 60 days or both.~~ Conviction on a 2nd or subsequent offense shall immediately terminate the license of the person convicted of being personally guilty of such failure to exercise due care and the person shall not be entitled to another license hereunder for a period of 5 years thereafter, nor shall the person in that period act as the servant or agent of a person licensed hereunder for the performance of the acts authorized by such license.

2005 - 2006 Legislature

- 5 -

LRB-1598/2
JK:kjf:ch
SECTION 7

1 **SECTION 7.** 134.66 (2) (am) of the statutes is amended to read:

2 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
3 subjobber, no agent, employee or independent contractor of a retailer, direct
4 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
5 of an independent contractor may provide for nominal or no consideration cigarettes
6 or tobacco products to any person except in a place where no person younger than 18
7 years of age is present or permitted to enter unless the person who is younger than
8 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
9 who has attained the age of 18 years.

10 **SECTION 8.** 134.66 (2) (d) of the statutes is amended to read:

11 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
12 or retailer, or their employees or agents, may provide cigarettes or tobacco products
13 for nominal or no consideration to any person under the age of 18.

14 **SECTION 9.** 134.66 (2) (e) of the statutes is amended to read:

15 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
16 than as a package or container on which a stamp is affixed under s. 139.32 (1).

17 **SECTION 10.** 134.66 (3m) of the statutes is created to read:

→ 18 134.66 (3m) DEFENSE OF DIRECT MARKETER. Proof of ^{all} ~~any~~ of the following facts *

19 by a direct marketer who sells cigarettes or tobacco products to a person under the
20 age of 18 is a defense to any prosecution for a violation under sub. (2) (a):

21 (a) That the direct marketer used a mechanism, approved by the department
22 of revenue, for verifying the age of the purchaser.

23 (b) That the purchaser falsely represented that he or she had attained the age
24 of 18 and presented a copy or facsimile of a government issued identification.

2005 - 2006 Legislature

- 6 -

LRB-1598/2

JK:kjf:ch

SECTION 10

(c) That the name and birthdate of the purchaser, as indicated by the purchaser, matched the name and birthdate on the identification presented under par. (b).

(d) That the sale was made in good faith, in reasonable reliance on the mechanism described in par. (a) and the representation and identification under pars. (b) and (c), and in the belief that the purchaser had attained the age of 18.

SECTION 11. 139.30 (1m) of the statutes is created to read:

139.30 (1m) "Consumer" means any individual who receives cigarettes for his or her personal use or consumption or any individual who has title to or possession of cigarettes for any purpose other than for sale or resale.

SECTION 12. 139.30 (2n) of the statutes is created to read:

139.30 (2n) "Direct marketer" means any person who solicits or sells cigarettes to consumers in this state by direct marketing.

SECTION 13. 139.30 (2p) of the statutes is created to read:

139.30 (2p) "Direct marketing" means publishing or making accessible an offer for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes. ~~Deleted "involvement not limited to" and "newspapers, magazines, radio"~~

SECTION 14. 139.30 (3) of the statutes is amended to read:

139.30 (3) "Distributor" means any person who acquires unstamped cigarettes from the manufacturer thereof ~~or from the first importer of record thereof~~, affixes stamps to the packages or other containers, stores them and sells them to other permittees or to retailers for resale ~~or~~ and who acquires ~~may~~ ^{also} acquire stamped cigarettes from ~~another permittee~~ ^{manufacturers or} distributors for such sales.

SECTION 15. 139.30 (4n) of the statutes is created to read:

2005 - 2006 Legislature

- 7 -

LRB-1598/2
JK:kjf:ch
SECTION 15

139.30 (4n) "Government issued identification" includes a valid driver's license, state identification card, passport, or military identification.

Added OK
Amd. 139.30(7) - see insert

SECTION 16. 139.30 (8s) of the statutes is created to read:

139.30 (8s) "Person" means any individual, sole proprietorship, partnership, limited liability company, corporation, or association, or any owner of a single-owner entity that is disregarded as a separate entity under ch. 71.

SECTION 17. 139.30 (10) of the statutes is amended to read:

~~139.30 (10) "Retailer" means any person who sells, exposes for sale or possesses with intent to sell to consumers any cigarettes by any means in which the consumer is physically present at the time of sale on a premises that sells cigarettes.~~

SECTION 18. 139.32 (1) of the statutes is amended to read:

139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the payment, the department shall provide stamps. A person who has paid the tax shall affix stamps of the proper denomination to each package in which cigarettes are packed, prior to the first sale within this state. First sale does not include a sale by a manufacturer to a distributor or to a direct marketer or by a distributor to a permittee who has obtained department approval as provided for in s. 139.321 (1) (a).

2. The tax shall be paid only once on each package or container.

~~SECTION 19. 139.32 (4) of the statutes is repeated.~~

SECTION 20. 139.32 (5) of the statutes is amended to read:

139.32 (5) ^{banded}Manufacturers, direct marketers, and distributors ^{having a permit} ~~authorized to purchase (and affix) tax stamps~~ from the secretary shall receive a discount of 1.6% 1.6 percent of the tax paid on stamp purchases.

SECTION 21. 139.32 (5m) of the statutes is amended to read:

amended to read: Add Sect. 19 from explanation of changes

2005 - 2006 Legislature

- 8 -

LRB-1598/2

JK:kjf:ch

SECTION 21

OK 1 139.32 (5m) Distributors, ^{banded} ~~direct marketers~~, and manufacturers shall pay to
2 the department the cost of printing and shipping those stamps.

✓ 3 SECTION 22. 139.32 (6) of the statutes is amended to read:

FIX 4 139.32 (6) Manufacturers, ^{banded} ~~direct marketers~~, and distributors ^{authorized to purchase} ~~having a permit~~
5 ^{tax stamps} ~~from the secretary~~ may purchase stamps on credit. The secretary may require

✓ 6 manufacturers, ~~direct marketers~~, and distributors who purchase stamps on credit
✓ 7 to file under the conditions prescribed by the secretary by rule.

✓ 8 SECTION 23. 139.321 (1) (intro.) of the statutes is amended to read:

✓ 9 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~
✓ 10 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
✓ 11 (1) and 139.33 (4).

✓ 12 SECTION 24. 139.321 (1) (a) 1. of the statutes is amended to read:

✓ 13 139.321 (1) (a) 1. Manufacturers, ^{banded} ~~direct marketers~~, distributors or warehouse
✓ 14 operators possessing valid permits issued by the secretary.

✓ 15 SECTION 25. 139.33 (3) of the statutes is amended to read:

✓ 16 139.33 (3) No person other than a member of the armed forces, as specified in
FIX 17 this subsection, a licensed distributor, or a licensed ^{banded} ~~direct marketer~~ may import into
18 this state ~~more than 400~~ cigarettes on which the excise tax imposed by s. 139.31 has ^{authorized to purchase and} ~~affix~~
19 not been paid and the container of which does not bear proper stamps. Within 15 ^{tax} ~~stamps~~
20 days, any such person importing cigarettes shall file a declaration of such cigarettes
21 imported and shall remit therewith the tax on such cigarettes imposed by this
22 section. Members of the armed forces shall not be required to report or pay the tax
23 on cigarettes in their possession if such cigarettes are issued to them by the U.S.
24 government or any of its subdivisions or were purchased in any armed forces post
25 exchange or service store. If the use tax imposed by this section is not paid when due,

2005 - 2006 Legislature

- 9 -

LRB-1598/2
JK:kjf:ch
SECTION 25

✓ 1 it shall become delinquent and the person liable for it shall pay, in addition, a penalty
✓ 2 of \$25 for each 200 cigarettes. Interest on the delinquent tax and penalty shall accrue
✓ 3 at the rate of ~~1.5%~~ 1.5 percent per month or each fraction of a month from the date
✓ 4 the tax became due until paid.

✓ 5 SECTION 26. 139.34 (1) (a) of the statutes is amended to read:

✓ 6 139.34 (1) (a) No person may manufacture cigarettes in this state or sell
FIX 7 cigarettes in this state as a ^{manufacturer} distributor, jobber, vending machine operator, direct
✓ 8 marketer, or multiple retailer and no person may operate a warehouse in this state
✓ 9 for the storage of cigarettes for another person without first filing an application for
✓ 10 and obtaining the proper permit to perform such operations from the department.

✓ 11 SECTION 27. 139.34 (1) (b) of the statutes is repealed.

✓ 12 SECTION 28. 139.34 (1) (c) (intro.) of the statutes is amended to read:

✓ 13 139.34 (1) (c) (intro.) ~~Subject to ss. 111.321, 111.322 and 111.335, no~~ No permit
✓ 14 under this section may be granted to any person to whom any of the following applies:

✓ 15 SECTION 29. 139.34 (1) (c) 1. to 6. of the statutes are repealed.

✓ 16 SECTION 30. 139.34 (1) (c) 1m. of the statutes is created to read:

✓ 17 139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has
✓ 18 an arrest record or a conviction record.

✓ 19 SECTION 31. 139.34 (1) (c) 2m. of the statutes is created to read:

✓ 20 139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has
✓ 21 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

✓ 22 SECTION 32. 139.34 (1) (c) 3m. of the statutes is created to read:

✓ 23 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.
✓ 24 77.61 (11).

✓ 25 SECTION 33. 139.34 (1) (cm) of the statutes is created to read:

2005 - 2006 Legislature

- 10 -

LRB-1598/2

JK:kjf:ch

SECTION 33

✓ 139.34 (1) (cm) The requirements under par. (c) apply to all partners of a partnership, all members of ^a limited liability company, all agents of a limited liability company or corporation, ~~all shareholders and directors of a limited liability company or corporation,~~ and all officers of a corporation. Subject to ss. 111.321, 111.322, and 111.335, if a business entity has been convicted of a crime, the entity may not be issued a permit under this subsection unless the entity has terminated its relationship with the individuals whose actions directly contributed to the conviction.

all shareholders and directors of a limited liability company or corporation

✓ SECTION 34. 139.34 (4) of the statutes is amended to read:

✓ 139.34 (4) A separate permit shall be required of and issued to each class of permittee and the holder of any permit shall perform only the operations thereby authorized. Such permit shall not be transferable from one person to another or from one premises to another. A separate permit shall be required for each place where cigarettes are stamped or where cigarettes are stored for sale at wholesale or through vending machines or multiple retail outlets, or by direct marketing.

✓ SECTION 35. 139.34 (6) of the statutes is amended to read:

✓ 139.34 (6) A vending machine operator or a multiple retailer may acquire unstamped cigarettes ^{Keep} ~~from the manufacturers thereof~~ and affix the stamps to packages or other containers only if the vending machine operator or multiple retailer ^{is} ~~also holds a permit as a distributor or direct marketer~~ ^{bonded} ~~and authorized to receive~~ ^{to purchase} ~~and affix stamps.~~ ^{unstamped cigarettes}

✓ SECTION 36. 139.34 (8) of the statutes is amended to read:

✓ 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on the premises described in the permit. The warehouse permit shall not authorize the holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a manufacturer, direct marketer, or distributor may be delivered only to a person holding a permit as a manufacturer, ^{or bonded} ~~direct marketer, or distributor~~ ^{authorized by the} ~~holder to give unstamped cigarettes~~ ^{purchase and affix stamps.}

authorized to purchase and affix tax stamps.

2005 - 2006 Legislature

- 11 -

LRB-1598/2
JK:kjf:ch
SECTION 37

SECTION 37. 139.345 of the statutes is created to read:

139.345 Direct marketing. (1) (a) (intro.) No person may sell cigarettes to

consumers in this state as a direct marketer or solicit sales of cigarettes to consumers in this state by direct marketing unless the person has obtained a permit from the department to make such sales or solicitations. The person shall file an application for a permit under this subsection with the department, in the manner prescribed by the department, and shall submit the following fee with the application:

1. If the person sells ^{less} ~~no more~~ ^{600,000} than 30,000 cigarettes annually to consumers in this state by direct marketing, \$500.

2. If the person sells ^{600,000} ~~more than~~ ^{or more} 30,000 cigarettes annually to consumers in this state by direct marketing, \$1,000.

(b) A permit issued under par. (a) expires on December 31 of each year.

(c) The department may not issue a permit to a person under par. (a) unless the person certifies to the department ^{in the manner prescribed by the department} that the person shall ^{acquire} ~~obtain~~ stamped cigarettes from a licensed ~~wholesaler or distributor~~ ^{manufacturer} or unstamped cigarettes from the ~~first~~ ^{manufacturer} ~~importer of record thereof~~ ^(state) pay the tax imposed under this subchapter on all unstamped cigarettes and affix stamps to the cigarette packages or containers as provided under s. 139.32 (1), store such packages or containers, and sell only such packages or containers to consumers in this state by direct marketing ^{or purchase} ~~for purchase~~ ^{acquires} stamped cigarettes from a distributor, to the packages or containers of which stamps have been affixed as provided under s. 139.32 (1), and sell only such packages or containers to consumers in this state by direct marketing.]

(d) No person may be issued a permit under this subsection unless the person certifies to the department, in the manner prescribed by the department, that all cigarette sales to consumers in this state shall be credit card ~~or personal check~~ ^{No -}

Do as definition
Banded Direct Mktr.
Reg Direct Mktr.

2005 - 2006 Legislature

- 12 -

LRB-1598/2

JK:kjf:ch

SECTION 37

RIR
add. inv. reg.
rule
✓ 1 transactions; that the invoices for all shipments of cigarette sales from the person
✓ 2 shall bear the person's name and address and permit ultimately issued under this
✓ 3 subsection; and that the person shall provide the department any information the
✓ 4 department *may deem* ~~considers~~ necessary to administer this section.

✓ 5 (2) (a) No person may purchase tax stamps in excess of the number of cigarette
✓ 6 sales specified in his or her permit under sub. (1) (a) unless the person pays the
✓ 7 permit fee under sub. (1) (a) that is applicable to the excess amount.

✓ 8 (b) No person may sell cigarettes in excess of the number of cigarette sales
✓ 9 specified in his or her permit under sub. (1) (a) unless the person pays the permit fee
✓ 10 under sub. (1) (a) that is applicable to the excess sales. Any person who sells
✓ 11 cigarettes in excess of the number of cigarette sales specified in his or her permit
✓ 12 *OK* shall pay a penalty to the department of \$5,000 or an amount that is equal to \$50 for
✓ 13 every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

✓ 14 (3) (a) No person may sell cigarettes to consumers in this state by direct
✓ 15 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and
✓ 16 stamps are affixed to the cigarette packages or containers as provided under s.
✓ 17 139.32.

✓ 18 (b) No person may sell cigarettes to consumers in this state by direct marketing
✓ 19 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

NEW?
GOOD!
✓ 20 (c) No person may sell cigarettes to consumers in this state by direct marketing
✓ 21 unless the cigarette brands are approved by the department and listed in the
✓ 22 directory of certified tobacco product manufacturers and brands as provided under
✓ 23 s. 895.12 (2) (b). *Comp. mgt*

2005 - 2006 Legislature

- 13 -

LRB-1598/2
JK:kjf:ch
SECTION 37

✓
✓
✓
✓
(4) No person may sell cigarettes to a consumer in this state by direct marketing unless the person verifies the consumer's identity and that the consumer is at least 18 years of age by any of the following methods:

✓
✓
✓
(a) The person uses a database, approved by the department, that includes information based on public records to verify the consumer's age and identity.

✓
✓
✓
✓
(b) The person receives from the consumer, at the time of purchase, a notarized copy of a government issued identification, the name specified on the identification matches the name of the consumer, and the birth date on the identification verifies that the purchaser is at least 18 years of age.

OK ✓
✓
✓
(c) The person uses a mechanism, other than a mechanism under par. (a) or (b), for verifying the age and identity of a consumer that is approved by the department.

✓
✓
✓
✓
✓
(5) Any person who, without having a valid permit under sub. (1), sells or solicits sales of cigarettes to consumers in this state by direct marketing shall pay a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct marketing, whichever is greater.

✓
✓
✓
(6) (a) No sale of cigarettes to a consumer in this state by direct marketing may exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser or address.

20 (b) Any person who sells cigarettes that exceed the maximum amounts under
21 par. (a) shall pay a penalty to the department of \$5,000 or an amount that is equal
22 to \$50 for every 200 cigarettes, or major fraction of 200 cigarettes, sold above the
23 maximum amounts, whichever is greater.

24 (c) Any person who purchases cigarettes that exceed the maximum amounts
25 under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the

2005 - 2006 Legislature

- 14 -

LRB-1598/2

JK:kjf:ch

SECTION 37

1 department of \$25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased
2 OK above the maximum amounts.

3 (7) No cigarettes may be shipped to a person who is under 18 years of age and
4 OK no cigarettes may be shipped to a post-office box.

5 (8) All revenue collected from permits and penalties under this section shall
6 be credited to the appropriation account under s. 20.566 (1) (gc) to enforce and
7 administer this section.

8 SECTION 38. 139.35 (1) of the statutes is amended to read:

9 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another
10 and no person may accept, purchase or borrow any stamps from another. All sales
11 and transfers of stamps may be made only by the secretary to permit holding
12 manufacturers ^{booked} ~~direct marketers~~ and distributors. ^{authorized to purchase and affix tax stamps.}

13 SECTION 39. 139.37 (1) (a) of the statutes is amended to read:

14 139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~
15 ~~resale solicit cigarette sales~~ in this state ~~for any manufacturer or permittee without~~
16 ~~first obtaining a~~ unless the person has filed an application for and obtained a valid
17 certificate under s. 73.03 (50) and a salesperson's permit from the department of
18 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes
19 ~~or take orders for cigarettes solicit cigarette sales~~ in this state ~~without first having~~
20 OK ~~such person secure~~ unless the person has filed an application for and obtained a valid
21 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize
22 another person to sell cigarettes or solicit cigarette sales in this state unless the
23 person has filed an application for and obtained a valid certificate under s. 73.03 (50)
24 and a valid permit under s. 139.34. The department shall issue the required number
25 ~~of permits to manufacturers and permittees who hold a valid certificate issued under~~

2005 - 2006 Legislature

- 15 -

LRB-1598/2

JK:kjf:ch

SECTION 39

1 s. 73.03 (50). Each application for a permit shall disclose the name and address of
2 ~~the person for whom they are soliciting,~~
3 the employer and such permit shall remain effective only while the salesperson
4 represents such named ~~employer~~ ^{person}. If such salesperson is thereafter employed by
5 another manufacturer or permittee person, the salesperson shall obtain a new
6 salesperson's permit. Each manufacturer and permittee shall notify the department
7 within 10 days after the resignation or dismissal of any such salesperson holding a
8 permit.

✓ 8 SECTION 40. 139.38 (1) of the statutes is amended to read:

✓ 9 139.38 (1) Every manufacturer located out of the state shall keep records of all
✓ 10 sales of cigarettes shipped into this state. Every manufacturer located in the state
✓ 11 shall keep records of production, sales and withdrawals of cigarettes. Every
✓ 12 distributor and direct marketer shall keep records of purchases and sales of
13 cigarettes. Every manufacturer, ^{bonded} direct marketer, and distributor ^{authorized to purchase} holding a permit
14 ~~and affix tax stamps~~ ^{affix tax} from the secretary with the right to purchase and apply stamps shall also keep
15 records of purchases and disposition of stamps. Every jobber, multiple retailer, and
✓ 16 vending machine operator shall keep records of all purchases and disposition of
✓ 17 cigarettes. Every warehouse operator shall keep records of receipts and withdrawals
✓ 18 of cigarettes. All such records shall be accurate and complete and be kept in a
✓ 19 manner prescribed by the secretary. These records shall be preserved on the
✓ 20 premises described in the permit or license in such a manner as to ensure
✓ 21 permanency and accessibility for inspection at reasonable hours by authorized
✓ 22 personnel of the department.

✓ 23 SECTION 41. 139.38 (1m) of the statutes is created to read:

✓ 24 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
✓ 25 are kept by direct marketers shall indicate, for each shipment of cigarettes into this

2005 - 2006 Legislature

- 16 -

LRB-1598/2

JK:kjf:ch

SECTION 41

1 state in the month preceding the report under sub. (2), the invoice date and number;
2 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
3 manufacturer of the cigarettes shipped and the ^{point of} ~~manufacturer's~~ origin; the
4 purchaser's name, address, and birth date; the name of the person to whom the
5 cigarettes were shipped; the address to which the cigarettes were shipped; and any
6 other information the department ^{may deem necessary.} ~~requires.~~

7 SECTION 42. 139.38 (2) of the statutes is amended to read:

8 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
9 distributor, jobber, and direct marketer shall render a true and correct invoice of
10 every sale of cigarettes at wholesale and every permittee shall on or before the 15th
11 day of each calendar month file a verified report of all cigarettes purchased, sold,
12 received, warehoused or withdrawn during the preceding calendar month.

13 (b) The department may allow any jobber, multiple retailer, ^{permitted} ~~direct marketer~~ ^{STET}
14 or vending machine operator permittee who does not sell cigarettes, except for those
15 on which the tax under this chapter is paid, to file a quarterly report. The quarterly
16 report shall be filed on or before the 15th day of the next month following the close
17 of each calendar quarter. The report shall specify the number of cigarettes purchased
18 and sold during the preceding calendar quarter.

19 SECTION 43. 139.395 of the statutes is amended to read:

20 139.395 Theft of tax moneys. All cigarette tax moneys received by a
21 distributor, ^{banded} ~~direct marketer~~, or manufacturer for the sale of cigarettes on which the
22 tax under this subchapter has become due and has not been paid are trust funds in
23 the hands of the distributor, ^{banded} ~~direct marketer~~, or manufacturer and are the property
24 of this state. Any distributor, ^{banded} ~~direct marketer~~, or manufacturer who fraudulently
25 withholds, appropriates or otherwise uses cigarette tax moneys that are the property

do not have to allow

2005 - 2006 Legislature

- 17 -

LRB-1598/2

JK:kjf:ch

SECTION 43

1 of this state is guilty of theft under s. 943.20 (1), whether or not the distributor, ^{banded} ~~direct~~
2 ~~marketer~~, or manufacturer has or claims to have an interest in those moneys.

3 SECTION 44. 139.40 (2) of the statutes is amended to read:

4 139.40 (2) ~~If cigarettes which do not bear the proper tax stamps or on which~~
5 ~~the tax has not been paid~~ Cigarettes that are so seized they as provided under sub.
6 (1) may be given to law enforcement officers to use in criminal investigations or sold
7 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after
8 deducting the costs of the sale and ~~the keeping of~~ storing the property, the proceeds
9 of the sale shall be paid into the state treasury, except that proceeds from the sale
10 of cigarettes seized from a direct marketer and obtained through the administration
11 of this subsection shall be credited to the appropriation account under s. 20.566 (1)
12 (gc). If the secretary finds that such cigarettes may deteriorate or become unfit for
13 use in criminal investigations or for sale or that those uses would otherwise be
14 impractical, the secretary may order them destroyed or give them to a charitable or
15 penal institution for free distribution to patients or inmates.

16 SECTION 45. 139.45 of the statutes is amended to read:

17 139.45 **Prosecutions by attorney general.** Upon request by the secretary
18 of revenue, the attorney general may represent this state or assist a district attorney
19 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

20 SECTION 46. 139.75 (2) of the statutes is amended to read:

21 139.75 (2) "Consumer" means any individual who receives tobacco products for
22 his or her personal use or consumption or any person individual who has title to or
23 possession of tobacco products ~~in storage for use or other consumption in this state~~
24 any purpose other than for sale or resale.

25 SECTION 47. 139.75 (3g) of the statutes is created to read:

See
Insert
→

SECTION 41. 139.44 (3) of the statutes is amended to read:

139.44 (3) Any permittee who fails to keep the records required by ss. 139.30 to 139.42 or 139.77 to 139.82 shall be fined not less than ~~\$100~~ \$500 nor more than ~~\$500~~ \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not more than ~~6 months~~ 180 days or both for the 2nd or subsequent offense.

SECTION 42. 139.44 (4) of the statutes is amended to read:

139.44 (4) Any person who refuses to permit the examination or inspection authorized in s. 139.39 (2) or 139.83 may be fined not more less than \$500 nor more than \$1,000 or imprisoned not more than ~~90~~ 180 days or both. Such refusal shall be cause for immediate suspension or revocation of permit by the secretary.

SECTION 43. 139.44 (6m) of the statutes is created to read:

139.44 (6m) Any person who manufactures or sells cigarettes in this state without holding the proper permit issued under this subchapter shall be fined not less than \$1,000 nor more than \$10,000 or imprisoned not less than 6 months nor more than 2 years or both.

is guilty
of a
Class I
felony

SECTION 44. 139.44 (7) of the statutes is amended to read:

139.44 (7) In addition to the penalties imposed for violation of ss. 139.30 to 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any person convicted of a 2nd or subsequent offense shall be automatically revoked and, he or she shall not be granted another permit for a period of 2 5 years following such revocation, and, for the 5-year period following revocation, he or she shall not act as the employee or agent of a permittee under this subchapter to perform acts authorized by any permit issued to the permittee under this subchapter.

(~~\$10,000~~)

3.5 max

= 1.5 prison

Insert
in pg 17

insert
whole
page at
p. 17,
line 16

Insert
in pg. 17

2005 - 2006 Legislature

- 18 -

LRB-1598/2

JK:kjf:ch

SECTION 47

1 139.75 (3g) "Direct marketer" means any person who solicits or sells tobacco
2 products to consumers in this state by direct marketing.

3 SECTION 48. 139.75 (3r) of the statutes is created to read:

4 139.75 (3r) "Direct marketing" means publishing or making accessible an offer
5 for the sale of tobacco products to consumers in this state, or selling tobacco products
6 to consumers in this state, using any means by which the consumer is not physically
7 present at the time of sale on a premise that sells tobacco products. See similar for CIG 139.30(2p) OK ✓

8 SECTION 49. 139.75 (4) (a) of the statutes is amended to read:

9 139.75 (4) (a) Any person in this state engaged in the business of selling tobacco
10 products ~~in this state~~ who brings, or causes to be brought, into this state from outside
11 the state any tobacco products for sale;

12 SECTION 50. 139.75 (4) (c) of the statutes is amended to read:

13 139.75 (4) (c) Any person outside this state engaged in the business of selling
14 tobacco products ~~outside this state~~ who ships or transports tobacco products to
15 retailers in this state to be sold by those retailers.

16 SECTION 51. 139.75 (4) (cm) of the statutes is created to read:

17 139.75 (4) (cm) Any person outside this state engaged in the business of selling
18 tobacco products who ships or transports tobacco products to consumers in this state.

19 SECTION 52. 139.75 (4n) of the statutes is created to read:

20 139.75 (4n) "Government issued identification" includes a valid driver's
21 license, state identification card, passport, or military identification.

22 SECTION 53. 139.75 (5s) of the statutes is created to read:

23 139.75 (5s) "Person" means any individual, sole proprietorship, partnership,
24 limited liability company, corporation, or association, or any owner of a single-owner
25 entity that is disregarded as a separate entity under ch. 71.

Need
Definition?

Addition
OK?

OK
Same as CIG
(39.30(4n))

OK
Same as CIG

2005 - 2006 Legislature

- 19 -

LRB-1598/2
JK:kjf:ch
SECTION 54

1 SECTION 54. 139.75 (7) of the statutes is amended to read:

OK 2 139.75 (7) "Retail outlet" means each place of business from which tobacco
3 products are sold to consumers by a retailer.

4 SECTION 55. 139.75 (8) of the statutes is amended to read:

OK 5 139.75 (8) "Retailer" means any person ~~engaged in the business of selling~~
Same as old 6 tobacco products who sells, exposes for sale, or possesses with intent to sell, to
139.30(10) 7 ultimate consumers any tobacco products by any means in which the consumer is
8 physically present at the time of sale on a premises that sells tobacco products.

9 SECTION 56. 139.76 (3) of the statutes is created to read:

10 139.76 (3) Except as provided in sub. (2), no person may possess tobacco
11 products in this state unless the tax imposed under sub. (1) is paid on such tobacco
12 products.

13 SECTION 57. 139.78 (1m) of the statutes is created to read:

14 139.78 (1m) Except as provided in s. 139.76 (2), no person other than a
15 distributor with a valid permit under s. 139.79 may import into this state tobacco
16 products for which the tax imposed under s. 139.76 (1) has not been paid.

17 SECTION 58. 139.79 (title) of the statutes is amended to read:

OK 18 139.79 (title) **Permits; distributor; direct marketer; subjobber.**

(Not in previous) 19 SECTION 59. 139.79 (1) of the statutes is amended to read:

OK 20 139.79 (1) No person may engage in the business of a distributor, direct
21 marketer, or subjobber of tobacco products at any place of business unless that
22 person has filed an application for and obtained a permit from the department to
23 engage in that business at such place.

24 SECTION 60. 139.79 (2) of the statutes is amended to read:

2005 - 2006 Legislature

- 20 -

LRB-1598/2

JK:kjf:ch

SECTION 60

OK 1 139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under
2 this section.

3 SECTION 61. 139.795 of the statutes is created to read:

4 139.795 Direct marketing. (1) (a) No person may sell tobacco products by
5 direct marketing to consumers in this state as a direct marketer or solicit sales of
6 tobacco products to consumers in this state by direct marketing unless the person has
7 obtained a permit from the department to make such sales or solicitations. The
8 person shall file an application for a permit under this subsection with the
9 department, in the manner prescribed by the department, and shall submit a \$500
10 fee with the application.

11 (b) No person may be issued a permit under this subsection unless the person
12 holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and
13 (9), as it applies to permits issued under s. 139.34, applies to permits issued under
14 this subsection.

15 (c) A permit issued under this subsection expires on December 31 of each year.

16 (d) No person may be issued a permit under this subsection unless the person
17 certifies to the department, in the manner prescribed by the department, that all
18 tobacco product sales to consumers in this state shall be credit card ~~or personal check~~ *omit*
19 transactions; that the invoice for all shipments of tobacco product sales from the
20 person shall bear the person's name and address and permit ultimately issued under
21 this subsection; and that the person shall provide the department any information
22 the department considers necessary to administer this section.

23 (2) No person may sell tobacco products to consumers in this state by direct
24 marketing unless the tax imposed under s. 139.76, and under s. 77.52 or 77.53, has
25 been paid with regard to such products.

(2) No person may sell tobacco products to consumers in this state by

(3) No person may sell tobacco products to consumers in this state by direct marketing unless all of the following apply:

(a) The person has a mechanism, approved by the department, for verifying the age of a consumer who purchases tobacco products.

(b) The person receives from the consumer, at the time of purchase, a copy or facsimile of a government issued identification and the name specified on ~~the identification matches the name of the consumer~~
the identification matches the name of the consumer.

(4) Any person who, without having a valid permit under sub. (1), sells or solicits sales of tobacco products to consumers in this state by direct marketing shall pay a penalty to the department of \$5,000 or an amount that is equal to 50 percent of the tax due on the tobacco products the person sold, without having a valid permit under sub. (1), to consumers in this state by direct marketing, whichever is greater.

(5) No tobacco products may be shipped or delivered to a person who is under 18 years of age and no tobacco products may be shipped to a post-office box.

(6) All revenue collected from permits and penalties under this section shall be credited to the appropriation account under s. 20.566 (1) (gc).

SECTION 62. 139.81 (1) of the statutes is amended to read:

139.81 (1) No person may sell or take orders for tobacco products for resale or solicit sales of tobacco products in this state for any manufacturer or permittee unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit from the department. No manufacturer or

Not
in
other
version

* add insert
on next
page
→ Do same as
cigarette
also

2005 - 2006 Legislature

- 22 -

LRB-1598/2

JK:kjf:ch

SECTION 62

1 permittee shall authorize any person to sell ~~or take orders for~~ tobacco products or
2 solicit sales of tobacco products in this state unless the person has filed an application
3 for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.
4 No person may authorize another person to sell tobacco products or solicit sales of
5 tobacco products in this state unless the person has filed an application for and
6 obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79.
7 Each application for a permit shall disclose the name and address of the employer
8 and shall remain effective only while the salesperson represents the named
9 employer. If the salesperson is thereafter employed by another ~~manufacturer or~~
10 ~~permittee person~~ the salesperson shall obtain a new salesperson's permit. Each
11 ~~manufacturer and~~ permittee shall notify the department within 10 days after the
12 resignation or dismissal of any salesperson holding a permit.

13 SECTION 63. 139.81 (2) of the statutes is amended to read:

14 139.81 (2) Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this
15 section.

16 (END)

Need delayed effective date :

at least 6 months

9 months would be great

→ July 1, 2006?

the identification matches the name of the consumer.

(4) Any person who, without having a valid permit under sub. (1), sells or solicits sales of tobacco products to consumers in this state by direct marketing shall pay to the department for each calendar month of sales a penalty of \$5,000 or an amount that is equal to 50% of the tax due on the tobacco products the person sold, without having a valid permit under sub. (1), to consumers in this state by direct marketing, whichever is greater.

(5) No tobacco products may be shipped or delivered to a person who is under 18 years of age. Every package used to ship tobacco products that are sold as provided under this section and are to be delivered to a person in this state shall be clearly labeled to indicate both that the package contains tobacco products and that the package may not be delivered to a person who is under 18 years of age.

(6) All revenue collected from permits and penalties under this section shall be credited to the appropriation account under s. 20.566 (1) (gcd) to enforce and administer this section.

SECTION 56. 139.81 (2) of the statutes is amended to read:

139.81 (2) Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this section.

(END)

Insert

add to
p. 21, line 20:

EXPLANATION OF CHANGES TO LRB-1598/2

Pg. 1

Section 14: 139.30(3) Definition of "Distributor":1. Pg. 6, line 20: **Delete "or from the first importer of record thereof".**

(Current law definition of "Distributor" is working for Wisconsin's Master Settlement Agreement (MSA) legislation enforcement for WI Stats. 895.10/895.12. Do not include this in the definition. It may cause issues/setbacks with WDOR enforcement of the MSA. This is important.)

2. Pg. 6, line 23: **Change "from another permittee" to "from manufacturers or distributors".**

(To be consistent with other definitions and wording in statutes. Also, to maintain a level of enforcement and avoid counterfeit/black market cigarettes in the distribution chain, distributors MUST only purchase stamped cigarettes from manufacturers or distributors only. Other wholesalers do not report sales, they file quarterly reports and they do not usually have the computer capability to track distribution as well as distributors.)

Pg. 7 ADD Amendment to 139.30(7):

"139.30(7) of the statutes is amended to read:

✓ 139.30(7) "Manufacturer" means any person who directly manufactures cigarettes for the purpose of sale, including the authorized agent of a person who directly manufactures cigarettes for the purpose of sale."

(For consistency and to correlate the MSA definition of "manufacturer" in 895.10 to that of Chapter 139 subchapter II.)

✓ **Pg. 7, Delete lines 7-10.** The definition of "retailer" should not require amendment. The definition of direct marketer covers sales when the consumer is not present. At one time this amendment was considered, but then discarded.

Pg. 9, line 11 Add changes on copy that now include the missing current law wording that is needed. Contact Lili Crane with any questions and see her note below.

- Page 9, line 11. 139.34(1)(b) of the statutes is repealed. Section 139.34(1)(b) states: This section [Permits required] applies to all officers, directors, agents and stockholders holding 5% or more of the stock of any corporation applying for a permit under this section. Page 10, lines 1 through 7, restate this section and adds partners of a partnership, all members of limited liability company, all agents of a limited liability company or corporation and all officers of a corporation. It does not include directors and stockholders of a corporation. I recommend including directors and stockholders in this new section.

Pg. 7, line 19 - Section 19: 139.32(4) SHOULD NOT BE REPEALED, but AMENDED as follows:

✓ "139.32(4) In lieu of stamps the secretary may authorize impressions applied by the use of meter other machines. The secretary shall prescribe by rule the type of impression and the kind of machines which may be used."

(Meter machines are obsolete. However, by amendment, it allows the dept., to proceed with new stamping technology, as it becomes available without having to redo statutes and only do a rule).

EXPLANATION OF CHANGES TO LRB-1598/2**Pg. 2**

Section 20: Line 21 & 22 should read "139.32(5) Manufacturers, direct marketers, and distributors ~~having a permit from the secretary~~ authorized to purchase tax stamps shall receive a discount of 1.6 percent of the tax paid on stamp purchases."

(Important to reference permittees that are authorized by WDOR to purchase (and affix) tax stamps. Not all manufacturers, direct marketers and/or distributor permittees purchase and affix tax stamps. In this legislation alone, a direct marketer may purchase only WI stamped cigarettes from a distributor and sell to consumers. Delete "having a permit from the secretary" as WDOR would not authorize a person who did not hold a permit.)

NOTE: IF ADDING "authorized by the secretary to purchase and affix tax stamps, would need to be consistent w/other sections also and add to Section ____ [139.32(6), 139.33(3), 139.34(3), 139.34(6), 139.34(8), 139.38(1)]

Section 35: 139.34(6) – Must keep "from the manufacturers thereof".

(This defines "direct buy", an important WDOR enforcement of the MSA and is best to leave it in to avoid any question.)

Section 37: Pg. 11, Lines 8 & 10: Change 30,000 cigarettes to 600,000 cigarettes. Also, the cutoff must be clear at "600,000 or more" or 1 roll of stamps. To do so, must use "less than 600,000" or else would need to state line 8 as "no more than 599,999 cigarettes" and line 10 as "more than 599,999 cigarettes". As is, line 8 "no more than 600,000 cigarettes" implies they could sell 600,000 cigarettes or purchase 1 roll of stamps. It is intended that the purchase of 1 roll of 30,000 stamps is to be covered by the \$1000 permit fee. Word carefully to maintain this control feature.

- 600,000 is used as a control factor for WDOR for stamp sales based on how WDOR sells tax stamps. In addition, it also shows the type of business activity of the permittee.

Ex. Stamps sold as follows:

- 10 sheets of 150 stamps: Covers 30,000 cigarettes; may be affixed with an iron hand stamp (small business operation/sales) OR
 - Roll of 30,000 stamps each: Covers 600,000 cigarettes – requires a stamping machine (large business operation/sales).
 - (30,000 cigarettes calculate to 150 cartons (ctn.) or \$3.34 registration fee per ctn. compared to 600,000 cigarettes or 3000 ctns. at approx. \$0.33* registration fee per ctn.
- *Fee will reduce with sales over 600,000 cigarettes).

Pg. 11, Line 15 & 16:

1. Delete "wholesaler or".

To maintain a level of enforcement and avoid counterfeit/black market cigarettes in the distribution chain, direct marketers MUST purchase stamped cigarettes from manufacturers or distributors only. Other wholesalers do not report sales, they file quarterly reports and they do not usually have the computer capability to track distribution as well as distributors.

2. Delete "first importer of record thereof" and replace with "manufacturer thereof".

First importer of record is to be deleted (see first entry above). First importer of record is covered under current law in the definition of "manufacturer" (i.e. the authorized agent of the manufacturer thereof). In addition, if left, "first importer of record" alone would not cover domestic manufactured cigarettes.

EXPLANATION OF CHANGES TO LRB-1598/2**Pg. 3**

Pg. 11, Line 14-22 Redo as definitions to clarify and define the 2 different types of direct marketer permits that will be issued specific to the type of operations allowed. Definitions below incorporate line 14-22 / "bonded direct marketer" is purposely worded after the definition of distributor:

"Bonded Direct Marketer" means any person who acquires unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages or other containers, stores them and sells them by direct marketing to consumers for their own personal use and who may also acquire stamped cigarettes from manufacturers or distributors for such sales.

"Permitted Direct Marketer" means any person who acquires stamped cigarettes from manufacturers or distributors, stores them and sells them by direct marketing to consumers for their own personal use.

Important: Bonded Direct Marketers must be held to the same requirements as distributors. Therefore, where ever a "distributor" is required to certify to the dept., purchase unstamped cigarettes directly from manufacturers, purchase stamps, security, etc., bonded direct marketer must also be added (i.e. 139.32(5), 139.32(5m), 139.32(6), 139.321(1)(a)1., 139.33(3), 139.34(3), 139.34(6), 139.34(8), 139.35(1), 139.38(1), 139.395, etc.).

When adding, be consistent and list as follows: manufacturer, distributor, and then bonded direct marketer.

Pg. 11, Line 25 Delete "or personal check"

(Important for audit purposes, all transactions should be credit card purchases. Besides, most companies most probably do not accept personal checks.)

Pg. 12, line 12 vs. Pg. 13, line 14*** WDOR suggests a higher penalty for *someone without a permit* who violates with sales, than someone with a permit** who exceeds sales limit. (i.e. WDOR version had \$1000 penalty or \$50 per ctn. Whichever is greater for errors made w/permit and \$5000 penalty or \$50 per ctn. Whichever is greater for sales without permit.

Pg. 14 (7): Recommend to include wording such that 1) all packages of cigarettes (and tobacco) shall be clearly labeled to indicate both that the package contains cigarettes (or tobacco) and that 2) the package may not be delivered to a person who is under 18 years of age.

Not sure why this was left out. Is #2 unenforceable? And/or no penalty provisions against delivery person/service? If so, it may be best at this point to leave out.

Pg. 16, line 8 139.38(2): Although it may not be problematic, it seems it would be safer to leave in "permittee" and not be as specific to the permit type for invoice requirements. It is agreed that "at wholesale" (line 10) should be removed as direct marketing sales to consumers would not be a wholesale activity.

EXPLANATION OF CHANGES TO LRB-1598/2**Pg. 4**

Pg. 16, line 13 Delete "direct marketer".?? Or leave in.

Direct marketers may need to file monthly reports to determine sales that may exceed their permit type. However, it does not hurt to leave in, as it only allows the department the permittee a quarterly reporting option and is not mandatory that the department allow it.

Pg. 17, after line 15 INSERT amendments to 139.44(3), (4), and (7); create 139.(6m) Increases to fines, penalties, etc. are necessary as a deterrent.

AS A REMINDER, ANY CHANGES MADE TO CIGARETTE STATS. THAT ARE DUPLICATED IN TOBACCO NEED TO BE THE SAME. Exception: The distinction of bonded direct marketer and permitted direct marketer are not required since the tobacco direct marketer is required to hold a tobacco distributor permit in addition to the direct marketing permit.

Contact Person:
Deborah Klimke, Excise Audit WDOR
(608) 266-8970

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1598/3ins
JK:kjf:ch

LPS: ins. out of order

Insert 4 - 13

X
1 **SECTION 11.** 134.65 (1n) of the statutes is created to read:

2 134.65 (1n) (a) The department of revenue shall prepare an application form
3 for licenses issued under this section. In addition to the information required under
4 sub. (1m), the form shall require all of the following information:

5 ✓ 1. The applicant's history relevant to the applicant's fitness to hold a license
6 under this section.

7 ✓ 2. The kind of license for which the applicant is applying.

8 ✓ 3. The premises where cigarettes or tobacco products will be sold or stored.

9 ✓ 4. If the applicant is a corporation, the identity of the corporate officers and
10 agent.

11 ✓ 5. If the applicant is a limited liability company, the identity of the company
12 members or managers and agent.

13 ✓ 6. The applicant's trade name, if any.

14 ✓ 7. Any other information required by the department.

15 ✓ (b) The department of revenue shall provide 1 copy of each application prepared
16 under this subsection to each city, village, and town.

17 ✓ (c) Each applicant for a license under this section shall use the application form
18 prepared under this subsection.

19 (d) 1. Each application for a license under this section shall be sworn to by the
20 applicant and the applicant shall submit the application with the clerk of the city,
21 village, or town where the intended place of sale is located. ✓

2. Within 10[✓] days of any change in any fact set forth in an application, the applicant or license holder shall file a written description of the change with the clerk of the city, village, or town where the application was submitted. ✓

3. Any person may inspect applications submitted under this paragraph. ✓ The clerk of each city, village, or town where such applications are submitted shall retain all applications submitted under this paragraph, but may destroy all applications that have been retained for 5^X years or longer. ✓

~~SECTION 2.~~ 134.65 (5) of the statutes is amended to read:

134.65 (5) Any person violating this section shall be fined not more than \$100[✓] \$1,000 nor less than \$25 \$500 for the first offense and not more than \$200 \$5,000 nor less than \$25 \$1,000 or imprisoned not exceeding 180 days or both for the 2nd or subsequent offense. ~~If upon such 2nd or subsequent violation, the person so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, the person shall be fined not more than \$300 nor less than \$25 or imprisoned not exceeding 60 days or both.~~ Conviction on a 2nd or subsequent offense shall immediately terminate the license of the person convicted of being personally guilty of such failure to exercise due care and the person shall not be entitled to another license hereunder for a period of 5 years thereafter, nor shall the person in that period act as the servant or agent of a person licensed hereunder for the performance of the acts authorized by such license.

History: 1983 a. 27; 1987 a. 67; 1987 a. 482; 1997 a. 214; 2001 a. 75.

~~SECTION 3.~~ 134.66 (1) (a) of the statutes is amended to read:

134.66 (1) (a) "Cigarette" has the meaning given in s. 139.30 ~~(1)~~ (1m). ✓

History: 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; 1995 a. 352; 1997 a. 214; 1999 a. 9; 2001 a. 75; 2003 a. 326.

Insert 6 - 5

~~SECTION 4.~~ 139.30 (1) of the statutes is renumbered 139.30 (1m). ✓

1 SECTION ~~5~~ 139.30 (1d) of the statutes is created to read:

2 139.30 (1d) "Bonded direct marketer" means any person who acquires
3 unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages
4 or other containers, stores them and sells them by direct marketing to consumers for
5 their own personal use and who may also acquire stamped cigarettes from
6 manufacturers or distributors for such sales. ✓

Insert 6 - 12

7 SECTION ~~6~~ 139.30 (2nn) of the statutes is created to read:

8 139.30 (2nn) "Direct marketer permittee" means any person who acquires
9 stamped cigarettes from the manufacturers or distributors, stores them and sells
10 them by direct marketing to consumers for their own personal use. ✓

Insert 7 - 2

11 SECTION ~~7~~ 139.30 (7) of the statutes is amended to read: ✓

12 139.30 (7) "Manufacturer" means any person who directly manufactures
13 cigarettes for the purpose of sale, including the authorized agent of a person who
14 directly manufactures cigarettes for the purpose of sale. ✓

History: 1979 c. 34, 221; 1983 a. 27, 189; 1985 a. 302; 1993 a. 16, 482; 1997 a. 27; 1999 a. 9; 2001 a. 16.

Insert 7 - 18

15 SECTION ~~8~~ 139.32 (4) of the statutes is amended to read:

16 139.32 (4) In lieu of stamps the secretary may authorize impressions applied
17 by the use of meter machines. The secretary shall prescribe by rule the type of
18 impression and the kind of machines which may be used.

History: 1971 c. 125; 1977 c. 29; 1983 a. 27; 1985 a. 29; 1987 a. 399; 1989 a. 31; 1993 a. 16, 482; 1997 a. 27.

Insert 10 - 7

19 SECTION ~~9~~ 139.34 (3) of the statutes is amended to read:

1 139.34 (3) No distributor or bonded direct marketer may affix stamps to
2 cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct
3 marketer certifies to the department, in a manner prescribed by the department,
4 that the distributor or bonded direct marketer purchases cigarettes directly from a
5 manufacturer.

History: 1971 c. 219; 1973 c. 198; 1975 c. 39 s. 732 (2m); 1977 c. 125; 1979 c. 34, 89, 221; 1981 c. 79 s. 18; 1981 c. 334 s. 25 (1); 1981 c. 380, 391; 1985 a. 313; 1989 a. 303; 1991 a. 32, 39; 1993 a. 112, 482; 1995 a. 27, 448; 1997 a. 27; 2001 a. 16.

Insert 14 - 4

6 ^{NOT} Every package used to ship cigarettes that are sold as provided under this
7 section and delivered to a person in this state shall be clearly labeled to indicate that
8 the package contains cigarettes and may not be delivered to a person who is under
9 18 years of age. ✓

Insert 17 - 15

10 SECTION ~~10~~ 139.44 (3) of the statutes is amended to read:

11 139.44 (3) Any permittee who fails to keep the records required by ss. 139.30
12 to 139.42 or 139.77 to 139.82 shall be fined not less than \$100 \$500 nor more than
13 \$500 \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than
14 \$5,000 or imprisoned not more than 6 months 180 days or both for the 2nd or
15 subsequent offense.

History: 1981 c. 20; 1983 a. 63; 1985 a. 302; 1987 a. 399; 1989 a. 31; 1993 a. 16; 1997 a. 27, 283; 2001 a. 109.

16 SECTION ~~11~~ 139.44 (4) of the statutes is amended to read:

17 139.44 (4) Any person who refuses to permit the examination or inspection
18 authorized in s. 139.39 (2) or 139.83 may be fined not more less than \$500 nor more
19 than \$1,000 or imprisoned not more than 90 180 days or both. Such refusal shall be
20 cause for immediate suspension or revocation of permit by the secretary.

History: 1981 c. 20; 1983 a. 63; 1985 a. 302; 1987 a. 399; 1989 a. 31; 1993 a. 16; 1997 a. 27, 283; 2001 a. 109.

21 SECTION ~~12~~ 139.44 (6m) of the statutes is created to read:

1 139.44 (6m) Any person who manufactures or sells cigarettes in this state
2 without holding the proper permit issued under this subchapter is guilty of a Class
3 I felony. ✓

4 ~~SECTION 13.~~ 139.44 (7) of the statutes is amended to read: ✓

5 139.44 (7) In addition to the penalties imposed for violation of ss. 139.30 to
6 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any
7 person convicted of a 2nd or subsequent offense shall be automatically revoked and
8 he or she, the person shall not be granted another permit for a period of 2 5 years
9 following such revocation, and, for the 5 year period following revocation, the person
10 shall not act as the employee or agent of a permittee under this subchapter to perform
11 acts authorized by any permit issued to the permittee under this subchapter. ✓

History: 1981 c. 20; 1983 a. 63; 1985 a. 302; 1987 a. 399; 1989 a. 31; 1993 a. 16; 1997 a. 27; 283; 2001 a. 109.

Insert 14 - 4
21-18

INS OUT OF ORDER

12 Every package used to ship tobacco products that are sold as provided under
13 this section and delivered to a person in this state shall be clearly labeled to indicate
14 that the package contains tobacco products and may not be delivered to a person who
15 is under 18 years of age.

Insert 19 - 8

16 ~~SECTION 14.~~ 139.75 (12) of the statutes is amended to read: ✓

17 139.75 (12) "Tobacco products" means cigars; cheroots; stogies; periques;
18 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff;
19 snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos;
20 shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds
21 and forms of tobacco prepared in such manner as to be suitable for chewing or

1 smoking in a pipe or otherwise, or both for chewing and smoking; but "tobacco
2 products" does not include cigarettes, as defined under s. 139.30 ~~(1)~~ (1m).

History: 1981 c. 20; 1985 a. 302; 1997 a. 27; 1999 a. 9.

Insert 22 - 15

3 **SECTION ~~15~~** ^X 254.911 (1) of the statutes is amended to read:

4 254.911 (1) "Cigarette" has the meaning given in s. 139.30 ~~(1)~~ (1m).

History: 1999 a. 9; 2001 a. 75.

5 **SECTION ~~16~~** ^X 891.455 (4) of the statutes is amended to read:

6 891.455 (4) The presumption under sub. (2) for cancers caused by smoking or
7 tobacco product use shall not apply to any municipal fire fighter who smokes
8 cigarettes, as defined in s. 139.30 ~~(1)~~ (1m), or who uses a tobacco product, as defined
9 in s. 139.75 (12), after January 1, 2001.

History: 1997 a. 173; 1999 a. 9; 2001 a. 16.

10 **SECTION 9441. Effective dates; revenue.**

11 (1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. [✓] The treatment of
12 sections ?? ?? (??) of the statutes [✓] takes effect on July 1, 2006. [✓]

*please catalog
all sections effected
by the draft - jre*

INSERT
JOY

Insert 21-18 ?

Kreye, Joseph

From: Kraus, Jennifer - DOA
Sent: Tuesday, January 25, 2005 10:45 AM
To: Kreye, Joseph
Cc: Lashore, Patricia M; Gates-Hendrix, Sherrie
Subject: FW: LRB 1598/2 - Cigarette and Tobacco Direct Marketers

Joe - can you incorporate Vicki's suggested changes? Thx

-----Original Message-----

From: Lashore, Patricia M
Sent: Tuesday, January 25, 2005 10:36 AM
To: Kraus, Jennifer - DOA
Cc: Koskinen, John; Brennan, Audra D
Subject: FW: LRB 1598/2 - Cigarette and Tobacco Direct Marketers

Please see Vicki's comments below.

-----Original Message-----

From: Gibbons, Vicki L
Sent: Tuesday, January 25, 2005 8:47 AM
To: Lashore, Patricia M
Cc: Kruger, Blair P; Gates-Hendrix, Sherrie; Hardt, Diane L; Klimke, Debbie A
Subject: LRB 1598/2 - Cigarette and Tobacco Direct Marketers

Pat,

You had asked by to review LRB 1598/2, which is primarily a bill relating to the licensing of cigarette and tobacco direct marketers. However, the bill does affect sales tax in that Section 3 of the bill, creating sec. 134.65(1r), intends to provide that a direct marketer cannot obtain a license to sell cigarettes and tobacco products to consumers in this state unless it holds a permit for sales and use tax purposes. To accomplish this, the section requires that the direct marketer submit proof as provided in sec. 77.61(11), Wis. Stats. Section 77.61(11), Wis. Stats., provides:

Any city, village or town clerk or other official whose duty it is to issue licenses or permits to engage in a business involving the sale at retail of tangible personal property subject to tax under this subchapter, or the furnishing of services so subject to tax, shall, before issuing such license or permit, require proof that the person to whom such license or permit is to be issued is the holder of a seller's permit as required by this subchapter or has been informed by an employee of the department that the department will issue a seller's permit to that person.

This section has generally been used make sure businesses, such as taverns, retail stores, restaurants, and hotels, requiring liquor licenses, hold a seller's permit before a license is issued. These businesses have sales locations in Wisconsin, such that the requirement of a seller's permit is appropriate. However, for direct marketers and other sellers who do not have a sales location in Wisconsin, they will not be issued a seller's permit. Instead, such businesses are issued a use tax registration certificate upon application. If the direct marketers have no physical presence in the state, they are not required to register for sales and use tax.

If the purpose of this LRB draft is to make sure that direct marketers, who may not otherwise be required to register to collect Wisconsin sales or use tax, do in fact register and collect, I recommend that sec. 77.61(11), Wis. Stats. (2001-02), be amended as follows:

77.61(11) Any city, village or town clerk or other official whose duty it is to issue licenses or permits to engage in a business involving the sale at retail of tangible personal property subject to tax under this subchapter, or the furnishing of services so subject to tax, shall, before issuing such license or permit, require proof that the person to whom such license or permit is to be issued is the holder of a seller's permit as required by , or is registered to collect, report, and remit use tax, under this subchapter or has been informed by an employee of the department that the department will issue a seller's permit to that person or register that person to collect, report, and remit use tax.

If you have any questions, please contact me.

Vicki L. Gibbons

Staff Specialist
Wisconsin Department of Revenue
P.O. Box 8933
Madison, WI 53708
(608) 266-3873
vgibbons@dor.state.wi.us

Kreye, Joseph

From: Gates-Hendrix, Sherrie
Sent: Tuesday, January 25, 2005 9:35 AM
To: Kraus, Jennifer - DOA
Cc: Kreye, Joseph; Lashore, Patricia M
Subject: FW: LRB 1598/2 - Cigarette and Tobacco Direct Marketers

Jenny -- I realize it may be too late to make changes to your LRB drafts, but I thought I'd forward this to make you aware of it in case you have time to address it.

Sherrie

From: Gibbons, Vicki L
Sent: Tuesday, January 25, 2005 8:47 AM
To: Lashore, Patricia M
Cc: Kruger, Blair P; Gates-Hendrix, Sherrie; Hardt, Diane L; Klimke, Debbie A
Subject: LRB 1598/2 - Cigarette and Tobacco Direct Marketers

Pat,

You had asked by to review LRB 1598/2, which is primarily a bill relating to the licensing of cigarette and tobacco direct marketers. However, the bill does affect sales tax in that Section 3 of the bill, creating sec. 134.65(1r), intends to provide that a direct marketer cannot obtain a license to sell cigarettes and tobacco products to consumers in this state unless it holds a permit for sales and use tax purposes. To accomplish this, the section requires that the direct marketer submit proof as provided in sec. 77.61(11), Wis. Stats. Section 77.61(11), Wis. Stats., provides:

Any city, village or town clerk or other official whose duty it is to issue licenses or permits to engage in a business involving the sale at retail of tangible personal property subject to tax under this subchapter, or the furnishing of services so subject to tax, shall, before issuing such license or permit, require proof that the person to whom such license or permit is to be issued is the holder of a seller's permit as required by this subchapter or has been informed by an employee of the department that the department will issue a seller's permit to that person.

This section has generally been used make sure businesses, such as taverns, retail stores, restaurants, and hotels, requiring liquor licenses, hold a seller's permit before a license is issued. These businesses have sales locations in Wisconsin, such that the requirement of a seller's permit is appropriate. However, for direct marketers and other sellers who do not have a sales location in Wisconsin, they will not be issued a seller's permit. Instead, such businesses are issued a use tax registration certificate upon application. If the direct marketers have no physical presence in the state, they are not required to register for sales and use tax.

If the purpose of this LRB draft is to make sure that direct marketers, who may not otherwise be required to register to collect Wisconsin sales or use tax, do in fact register and collect, I recommend that sec. 77.61(11), Wis. Stats. (2001-02), be amended as follows:

77.61(11) Any city, village or town clerk or other official whose duty it is to issue licenses or permits to engage in a business involving the sale at retail of tangible personal property subject to tax under this subchapter, or the furnishing of services so subject to tax, shall, before issuing such license or permit, require proof that the person to whom such license or permit is to be issued is the holder of a seller's permit as required by , or is registered to collect, report, and remit use tax, under this subchapter or has been informed by an employee of the department that the department will issue a seller's permit to that person or register that person to collect, report, and remit use tax.

If you have any questions, please contact me.

Vicki L. Gibbons
Staff Specialist
Wisconsin Department of Revenue
P.O. Box 8933
Madison, WI 53708
(608) 266-3873

vgibbons@dor.state.wi.us <mailto:vgibbons@dor.state.wi.us >